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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 59

MABEL G. REINECKE, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS, PETITIONER

vs.

EUDORA HULL SPALDING

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 30, 1929
CERTIORARI GRANTED APRIL 29, 1929

(34108)

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1 [Caption omitted.]

2 In United States District Court, Northern District of Illinois, Eastern Division

EUDORA HULL SPALDING, PLAINTIFF

vs.

MABEL G. REINECKE, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST District of Illinois, defendant

No. 35700

Declaration

Filed June 4, 1926

Eudora Hull Spalding, plaintiff, by John M. Zane, Henry A. Gardner, Alfred T. Carton, and Urban A. Lavery, her attorneys, complains of Mabel G. Reinecke, collector of internal revenue for the first district of Illinois, defendant, of a plea of trespass on the case upon promises, and shows to the court that this is a suit of a civil nature at common law arising under the laws of the United States providing for internal revenue.

First count

1. For that whereas plaintiff is a citizen of the United States and a resident of the city of Chicago, county of Cook, and State of Illinois, and the defendant at the times more specifiaclly hereinafter mentioned was and now is a resident and an inhabitant of the said city of Chicago, and of the northern district of Illinois, and of the eastern division thereof, and was and still is the duly appointed and qualified United States collector of internal revenue for the first district of Illinois, and the plaintiff alleges:

3 2. That plaintiff was the owner on March 1, 1913, of an undivided one-sixth interest in certain iron ore bearing lands situated in the county of St. Louis, State of Minnesota, more particularly described as follows:

Tract No. 1. Lots No. 3 and 4 in section 6, township 57 north of range 20 west of the fourth principal meridian, being the same as the north ½ of the northwest ¼ of said section 6.

Tract No. 2. The south ½ of the northeast ¼ and the northeast ¼ of the southeast ¼ of section 2, township 57 north, range 21 west, of the fourth principal meridian.

Tract No. 3. The northwest ¼ of the southwest ¼ of section 1 and the southeast ¼ of the southeast ¼ of section 2, township 57 north, range 21 west of the fourth principal meridian.

Tract No. 4. Lot No. 2 of section 31 in township 58 north of range 17 west of the fourth principal meridian.

Tract No. 5. Lot No. 5 and the southeast ¼ of the northwest ¼ of section 6 in township 57 north, range 20 west of the fourth principal meridian.

Tract No. 6. The east ½ of the southeast ¼ of section 11 and the southeast ¼ of the northwest ¼ and the west ½ of the southwest ¼ of section 12, all in township 57 north, range 21 west of the fourth principal meridian, and the northwest ¼ of section 7, township 57 north, range 20 west of the fourth principal meridian.

Tract No. 7. The northeast ¼ of the northeast ¼ of section 7, township 57 north, range 17 west of the fourth principal meridian.

Tract No. 8. The northeast ¼ of the northeast ¼ of section 11, and the north ½ of the northwest ¼ of section 12, township 57 north, range 21 west of the fourth principal meridian.

Tract No. 9. The north ½ of the northeast ¼ and the southwest ¼ of the northeast ¼ of section 6, township 57 north, range 20 west of the fourth principal meridian.

Tract No. 10. The southwest ¼ of the southwest ¼ known as lot No. 3 of section 22, township 58 north, range 20 west of the fourth principal meridian.

Tract No. 11. The northwest ¼ of the southeast ¼ and the northeast ¼ of the southwest ¼ of section 6, township 57 north, range 20 west of the fourth principal meridian.

4 Tract No. 12. The southeast ¼ of the northeast ¼ of section 11 and the southwest ¼ of the northwest ¼ of section 12, township 57 north, range 21 west of the fourth principal meridian.

Tract No. 13. The southwest ¼ of the southeast ¼ and the southeast ¼ of the southwest ¼ of section 6, township 57 north, range 20 west of the fourth principal meridian.

That said tracts of land were on March 1, 1913, leased to various lessees, as follows:

Tracts Nos. 1, 2, 3, 4, and 5 for a term of forty-five (45) years from and after January 1, 1905, for the purposes of exploring for and mining, taking out, and removing and shipping therefrom the merchantable iron ore therein upon a royalty at the rate of twenty-five cents (25c.) per cross ton of two thousand two hundred and forty (2,240) pounds, due and payable on the 20th days of April, July, October, and January in each calendar year, with a guaranteed minimum yearly output of six hundred thousand (600,000) gross tons for the term. Such minimum royalty was payable quarterly whether or not sufficient ore was extracted to actually amount to same at the prescribed royalty rate, but prepaid royalties might be credited against ore subsequently extracted in excess of the minimum. Royalties in excess of the minimum paid on ore extracted during any quarter might be applied on the minimum royalty for any subsequent quarter in the same year. The lessee agreed to pay all taxes and assessments and to keep the premises free and clear of all encum-

brances arising from labor or mechanics' liens or claims, all covenants in the lease to run with the land. All of said leases covering the other tracts were substantially similar, except as follows:

The lease on tract No. 6 was for fifty (50) years from January 1, 1905, and the guaranteed minimum was three hundred thousand (300,000) gross tons for the last five years.

The lease on tract No. 7 was for fifty (50) years from January 1, 1902, and provided for a minimum annual royalty of fifty thousand (50,000) tons.

The lease on tract No. 8 was for fifty (50) years from January 1, 1902, and provided for a minimum annual royalty of one hundred thousand (100,000) tons.

The lease on tract No. 9 was for fifty (50) years from July 1, 1902, and provided for a minimum annual royalty of one hundred and fifty thousand (150,000) tons.

5 The lease on tract No. 10 was for fifty (50) years from January 1, 1903, and provided for a minimum annual royalty of fifty thousand (50,000) tons.

The lease on tract No. 11 was for fifty (50) years from October 1, 1902, and provided for a minimum annual royalty of one hundred thousand (100,000) tons.

The lease on tract No. 12 was for fifty (50) years from January 1, 1903, and provided for a minimum annual royalty of one hundred thousand (100,000) tons, and the lease on tract No. 13 was for twenty-five (25) years from October 1, 1903, and provided for a minimum annual royalty of fifty thousand (50,000) tons.

3. That during the calendar year 1917 plaintiff was in receipt of moneys under and by the terms of said leases for ore removed and to be removed from said lands amounting to $260,070.75.

4. That the plaintiff, in order to comply with the provisions of the revenue acts of 1916 and 1917 in due course filed her income tax return for the calendar year 1917. That the plaintiff in said tax return showed the sum of $30,158.75 as net income. In arriving at such net income plaintiff deducted from her gross income the following items among others, namely:

Donations	$4,523.81
Depletion of mines	260,670.76

leaving the amount of net income as above set out. Said return showed the sum of $598.85 due as income tax from plaintiff which said plaintiff promptly paid.

5. That thereafter the Commissioner of Internal Revenue (hereinafter called the "commissioner"), purporting the act in reliance upon the provisions of said revenue acts of 1916 and 1917, through the medium of a letter dated July 13, 1922, written on his behalf by E. E. Alden, internal revenue agent, stated that he was about to assess the plaintiff an additional income tax for the year 1917 based as is shown by said letter upon the conclusion that the amount of $4,523.81 deducted by plaintiff for donations in computing her said income and the amount of $260,670.76 deducted by plaintiff for

depletion were not correct, but that the sum of $29,143.66 was deductible for donations and the sum of $96,870.74 was deductible for depletion.

Said commissioner allowed a depletion of $.0886243 per ton of ore for all ore removed from said ore bearing properties of said
6 plaintiff and for each 25¢ of minimum royalty paid under and by the terms of said leases, such depletion per ton and the total depletion for the year being arrived at as follows:

Ore reserve March 1, 1913, according to the Minnesota Tax Commission as shown on questionnaire of the *of the* Royal Mineral Association——tons	191,417,150
Less advance royalty payment by lessees, prior to March 1, 1913, on——tons	3,034,258
Net tonnage as of March 1, 1913——tons	188,382,892
Plaintiff's interest, one-sixth——tons	31,397,148.7
Total average yearly extraction, 1913 to 1918, inclusive	4,770,000
Maximum life of mine allowed——years	40
Interest rate allowed	6%
Royalty rate per ton	25¢
Capital returnable in 40 years	$7,849,287.18
Present worth of interest March 1, 1913	2,782,551.64
Unit cost per ton, March 1, 1913	$0.0886243
Depletion in 1917——tons	1,040,289.4
At .0886243 per ton	$92,194.92

6. That thereafter the commissioner through the medium of a letter written on his behalf by J. G. Bright, deputy commissioner, stated that he was about to assess against plaintiff an amended income tax for the calendar year 1917 based, as is shown by said letter, upon the conclusion that the depletion to be allowed plaintiff should be increased over the amount stated in the letter of said Alden to $99,561.20, and that plaintiff should be allowed expenses of mining ore of $4,675.84, and that plaintiff should be allowed a loss incurred on a farm owned by her amounting to $2,327.60. Said letter further stated that a deduction amounting to $27,689.15 for contributions should be allowed said plaintiff and that a total tax of $33,407.99 would be assessed against plaintiff. Pursuant to said letter the commissioner assessed the amount of $33,407.99 tax. Thereafter Mabel G. Reinecke, to wit, on September 19, 1924, who was then acting as collector of internal revenue for the first district of Illinois under the provisions of the revenue acts of 1916 and 1917, served on plaintiff a written notice and demand for tax, thereby demanding the payment by plaintiff at her office in Chicago, Illinois, on or before September 29, 1924, of an additional
7 income tax for the calendar year 1917, which was the additional tax assessed as aforesaid and was in the amount of $32,809.14 and interest amounting to $6,671.08. That said notice and demand stated that failure to pay or or before September 29, 1924, the sum demanded as aforesaid would cause a 5% penalty to accrue with interest at 1% per month from date due until paid and that failure to pay the sum demanded would cause seizure and sale of the property of the plaintiff to be made.

7. That on, to with, September 29, 1914, solely to avoid the threatened imposition of said penalty and interest for failure to pay and to avoid persecution and seizure and sale of her property and under duress, compulsion and coercion, the plaintiff paid to the defendant the sum of $39,480.22 tax and interest so assessed against her and demanded from her as aforesaid as additional tax for the calendar year 1917 and interest thereon; that said payment was made under protest and at the same time plaintiff protested in writing that the assessment of said tax and interest and payment of said tax and interest was unlawful and deprived the plaintiff of rights secured to her by the Constitution of the United States and the revenue acts of the United States and the rules and regulations of the Treasury Department and the Bureau of Internal Revenue.

8. The plaintiff denies the conclusion of the commissioner in said assessment letter of J. G. Bright, deputy commissioner, that the sum of $99,561.20 is the correct amount of depletion to be deducted from the gross income from the said ore mines, and claims the right to deduct from said gross income depletion of $214,630.31, being $115,069.11 more than the amount allowed by the commissioner as depletion by reason of the allowance of said additional depletion as claimed by plaintiff she claims that the deduction for charitable contributions allowed by the commissioner is excessive and should be $10,429.20 instead of $27,689.15, and that the net income of the said plaintiff subject to tax rightfully amounts to $59,098.79 instead of $156,907.57 as fixed by the commissioner.

9. That after payment by the plaintiff to the defendant of $39,480.22 additional tax and interest as aforesaid on, to wit, January 20, 1926, the plaintiff made and filed with the defendant for transmission to the commissioner an application, appeal and claim, No. 843 for the refund of the sum of $36,910.29 of said additional tax and
8 interest so assessed and demanded as aforesaid, in manner and form as provided in section 3226 in the Revised Statutes of the United States, the provisions of law in that regard and the regulations of the Secretary of the Treasury in pursuance of that law. Thereafter, by letter dated May 12, 1926, the commissioner rejected said claim in full.

10. That the value or market price of said ore in the ground untouched and unextracted on March 1, 1913, and on all dates subsequent thereto, exceeded the sum of twenty-five cents per ton, so that every ton of ore paid for under said leases in the year 1917 was disposed of at a price actually less than the market price of the ore, and if then sold free of said lease, would have realized more than twenty-five cents per ton. The actual depletion of the mines by each ton or ore extracted was more than twenty-five cents when extracted.

That under the terms of the law the depletion for ore extracted or considered to be extracted was fixed at the market value of the ore in place in the mine at the time and place of extraction, but if such depletion allowance per ton exceeded the amount fixed as the royalty

per ton in the lease, the depletion allowance to the plaintiff could not exceed such royalty, but since the royalty when paid included an amount of interest on the payment considered as deferred from March 1, 1913 to the date of actual payment of royalty and the allowance of such depletion in successive years could never exceed the market value of the ore in the mine on March 1, 1913.

That each payment for ore extracted consisted of two parts, one of which was interest on the deferred payment and the other of which was the actual present worth of the payment deferred from March 1, 1913. Said actual present worth is accurately represented for each ton by that sum which put at interest on March 1, 1913, would produce at the date of payment for ore the royalty paid per ton; to put it in another way, the actual present worth of the ore extracted is accurately ascertained by taking from the royalty per ton paid, the part of the royalty, when and as paid, which represented interest on the deferred payment from March 1, 1913.

That such an allowance of depletion in successive years and in the year 1917 did not and could not exceed the market value of such ore on March 1, 1913.

That the method of calculating the depletion followed by the
9 Government taxing body assumed the average present worth of the ore extracted for all the years, as the present worth of the ore extracted in each particular year and asserted that a payment for ore made in 1917, upon which the seller had waited for payment less than four years, was made up of precisely the same amounts of principal and interest as that for ore upon which the seller had been or would be compelled to wait for from twenty to forty years; that there was precisely as much interest in a payment of twenty-five cents per ton deferred for four years as in a payment of twenty-five cents per ton deferred for forty years.

The Government arrived at the present worth as of March 1, 1913, substantially in the following manner, to wit:

The total value of the ore was found by multiplying the total tonnage as estimated by the Minnesota Tax Commission by the 25c. royalty fixed by the lease. This sum was divided into forty years. It was assumed that one such part would be received by the taxpayer in each year of the estimated life of the mine. Each sum was then discounted at the rate of 6% for the period of time which would elapse between March 1, 1913, until same would be received by the taxpayer. After deducting the discount the remaining sums were added and the resulting amount was assumed to be the present worth. Conceding that such method is a correct one, it follows that the present worth of ore extracted in any one year is definitely ascertained, and that the ore extracted in different years has a different present worth and therefore a different value to the taxpayer. On the Government's own theory, as presented above, the unit of depletion can not properly be averaged for all the years.

That the Government's calculation admits that the present worth of the ore in a particular year was the amount for which depletion should be allowed, but disregards the terms of the lease by treating the ore as sold on March 1, 1913, at the averaged present worth for all the years of the lease.

That the present worth as of March 1, 1913, of the ore can not be accurately determined under the leases until the ore is actually extracted and the date of payment therefor thereby determined.

That the Government's system of figuring the present worth for the purpose of determining depletion as fixed in the sum exacted from the plaintiff as income tax, requires assumptions, not one of which is justified, namely, first, that precisely the same amount of ore will be extracted each year; second, that the mines have an arbitrary life of the term of each lease; third, that the exact amount of ore in the mine will be extracted precisely with the expiration of the term of the lease.

That the Government's method of determining the present worth as of March 1, 1913, and from that the depletion unit requires the use of a 6% rate of discount. The taxpayer maintains that such rate of discount is unreasonably large and is not the proper reasonable and prevailing rate in such a case as is here involved, even tho it may be in the case of mines operated by the taxpayer. The reason is that the taxpayer has none of the hazards of the ordinary operating mine owner. Here the ore is worth in the market upwards of $1.00 per ton, the royalty is but 25c. per ton; it is a necessary product in the industrial life of the nation; the lessees are financially beyond question and even though they were to fall into financial difficulties these leases, being assets of great value, would under any conceivable circumstances be surrendered. Therefor such properties are comparable with the very best of non-tax exempt securities, the prevailing rate of interest on which is about five per cent.

The amount of the interest rate being determined the correct method of figuring depletion requires the determination of only one fact fully ascertained before the return of the taxpayer is made, viz, the date of payment for ore.

That if of each payment for each ton of ore extracted, the amount of such payment which represents interest on the payment as deferred and actually paid, be figured, the income of the owner will be accurately determined as that part of the twenty-five cents, which represents interest.

That for the year 1917 a correct calculation under the rule above shows that upon the tons of ore extracted and paid for on January 14, 1917, of the payment of 25c. per ton $0.2095 was for selling price or principal and $0.0405 was interest on the deferred payments and that on the 330,507 tons extracted the plaintiff was entitled to depletion of $69,251.05; that upon the ore paid for on April 10, 1917, $0.2074 was for selling price or principal and $0.0426 was interest on the deferred payments and that on the 48,958 tons extracted the plaintiff was entitled to depletion of $10,153.29; that on the ore paid

for on July 10, 1917, $0.2053 was for selling price or principal and $0.0447 was interest on the deferred payments and that on the 231,090 tons extracted plaintiff was entitled to depletion of $47,434.55; that upon the ore paid for on October 10, 1917, $0.2032 was for
11 selling price or principal and $0.0468 was interest on the deferred payments and that on the 432,120 tons extracted the plaintiff was entitled to depletion of $87,791.42; that plaintiff is entitled to depletion amounting for the year 1917 to $214,630.31.

Therefore, the plaintiff's income subject to tax amounted to $59,098.83 and the tax which was properly due was $3,384.16. Having previously paid a tax of $598.85 there was rightfully due from plaintiff the sum of $2,785.31 additional tax, and she was by the enforced payment complained of required to pay $30,023.83 more tax than she should have paid.

That there was rightfully due from plaintiff as interest the sum of $570.98 instead of $6,671.08, and plaintiff was required to pay $6,100.10 more than she should have done.

11. That the said returns were not wilful, false, or fraudulent and did not contain any wilful understatement or undervaluation.

12. Wherefore defendant became on, to wit, September 29, 1924, indebted to plaintiff in the sum of $36,123.93 for money received by defendant and held by the defendant to the use of the plaintiff, and thereupon on the last day aforesaid an obligation arose under a promise implied in law to pay said sum to the plaintiff with interest thereon at the lawful rate on the part of the defendant and said promise so arisen by implication of law is the promise of the defendant now sued upon in this action.

Yet the defendant not regarding her said promises has not paid the saumd of $36,123.93 or any part thereof to the plaintiff but has wholly refused to the damage of the plaintiff in the sum of $60,000 and therefore she bring this suit, etc.

Second count

1. For that whereas plaintiff is a citizen of the United States and a resident of the city of Chicago, county of Cook and State of Illinois; and the defendant at the times more specifically hereinafter mentioned was and now is a resident and an inhabitant of the said city of Chicago, and of the northern district of Illinois and of the eastern division thereof and was and still is the duly appointed and qualified United States collector of internal revenue for the first district of Illinois; and the plaintiff alleges:

2. That the plaintiff was the owner on March 1, 1913, of an undivided one-sixth interest in certain iron ore bearing lands situated in the cou'ty of St. Louis, State of Minnesota, more particularly described as follows:

12 Tract No. 1. Lots No. 3 and 4 in section 6, township 57 north of range 20 west of the fourth principal meridian, being the same as the north ½ of the northwest ¼ of said section 6.

Tract No. 2. The south ½ of the northeast ¼ and the northeast ¼ of the southeast ¼ of section 2, township 57 north, range 21 west of the fourth principal meridian.

Tract No. 3. The northwest ¼ of the southwest ¼ of section 1 and the southeast ¼ of the southeast ¼ of section 2, township 57 north, range 21 west of the fourth principal meridian.

Tract No. 4. Lot No. 2 of section 31 in township 58 north of range 17 west of the fourth principal meridian.

Tract No. 5. Lot No. 5 and the southeast ¼ of the northwest ¼ of section 6 in township 57 north, range 20 west of the fourth principal meridian.

Tract No. 6. The east ½ of the southeast ¼ of section 11 and the southeast ¼ of the northwest ¼ and the west ½ of the southwest ¼ of section 12, all in township 57 north, range 21 west of the fourth principal meridian, and the northwest ¼ of section 7, township 57, north, range 20 west of the fourth principal meridian.

Tract No. 7. The northeast ¼ of the northeast ¼ of section 7, township 57 north, range 17 west of the fourth principal meridian.

Tract No. 8. The northeast ¼ of the northeast ¼ of section 11, and the north ½ of the northwest ¼ of section 12, township 57 north, range 21 west of the fourth principal meridian.

Tract No. 9. The north ½ of the northeast ¼ and the southwest ¼ of the northeast ¼ of section 6, township 57 north, range 20 west of the fourth principal meridian.

Tract No. 10. The southwest ¼ of the southwest ¼ known as lot No. 3 of section 22, township 58 north, range 20 west of the fourth principal meridian.

Tract No. 11. The northwest ¼ of the southeast ¼ and the northeast ¼ of the southwest ¼ of section 6, township 57 north, range 20 west of the fourth principal meridian.

Tract No. 12. The southeast ¼ of the northeast ¼ of section 11 and the southwest ¼ of the northwest ¼ of section 12, township 57 north, Range 21 west of the fourth principal meridian.

Tract No. 13. The southwest ¼ of the southeast ¼ of the
13 southeast ¼ of the southwest ¼ of section 6, township 57 north, range 20 west of the fourth principal meridian.

That said tracts of land were on March 1, 1913, leased to various lessees, as follows:

Tracts Nos. 1, 2, 3, 4, and 5 for a term of forty-five (45) years from and after January 1, 1905, for the purposes of exploring for and mining, taking our and removing and shipping therefrom the merchantable iron ore therein upon a royalty at the rate of twenty-five cents (25c) per gross ton of two thousand two hundred and forty (2,240) pounds, due and payable on the 20th days of April, July, October, and January in each calendar year, with a guaranteed minimum yearly output of six hundred thousand (600,000) gross tons for the term. Such minimum royalty was payable quarterly whether or not sufficient ore was extracted to actually amount to same at the

prescribed royalty rate, but prepaid royalties might be credited against ore subsequently extracted in excess of the minimum. Royalties in excess of the minimum paid on ore extracted during any quarter might be applied on the minimum royalty for any subsequent quarter in the same year. The lessee agreed to pay all taxes and assessments and to keep the premises free and clear of all encumbrances arising from labor or mechanic's liens or claims, all covenants in the lease to run with the land. All of said leases covering the other tracts were substantially similar, except as follows:

The lease on tract No. 6 was for fifty (50) years from January 1, 1905, and the guaranteed minimum was three hundred thousand (300,000) gross tons for the last five years.

The lease on tract No. 7 was for fifty (50) years from January 1, 1902, and provided for a minimum annual royalty of fifty thousand (50,000) tons.

The lease on tract No. 8 was for fifty (50) years from January 1, 1902, and provided for a minimum annual royalty of one hundred thousand (100,000) tons.

The lease on tract No. 9 was for fifty (50) years from July 1, 1902, and provided for a minimum annual royalty of one hundred and fifty thousand (150,000) tons.

The lease on tract No. 10 was for fifty (50) years from January 1, 1903, and provided for a minimum annual royalty of fifty thousand (50,000) tons.

The lease on tract No. 11 was for fifty (50) years from October 1, 1902, and provided for a minimum annual royalty of one hundred thousand (100,000) tons.

14 The lease on tract No. 12 was for fifty (50) years from January 1, 1903, and provided for a minimum annual royalty of one hundred thousand (100,000) tons, and the lease on tract No. 13 was for twenty-five (25) years from October 1, 1903, and provided for a minimum annual royalty of fifty thousand (50,000) tons.

3. That during the calendar year 1918, plaintiff was in receipt of moneys under and by the terms of said leases for ore removed and to be removed from said lands amounting to $219,940.43.

4. That the plaintiff in order to comply with the provisions of the revenue act of 1918 in due course filed her income tax return for the calendar year 1918. That the plaintiff in said tax return showed the sum of $45,628.79 as net income. In arriving at such net income plaintiff deducted from her gross income the following items among others, namely:

Donations	$8,052.13
Depletion of mines	219,940.41
Taxes	1,084.90
Other deductions	9,025.99

leaving the amount of net income as above set out. Said return showed the sum of $7,778.92 due as income tax from plaintiff which said plaintiff promptly paid.

5. That thereafter the Commissioner of Internal Revenue (hereinafter called the "commissioner") purporting to act in reliance upon the provisions of said revenue acts of 1918, through the medium of a letter dated July 13, 1922, written on his behalf by E. E. Alden, internal revenue agent, stated that he was about to assess the plaintiff an additional income tax for the year 1918 based as is shown by said letter upon the conclusion that the amount of $8,052.13 deducted by plaintiff for donations in computing her said income, the amount of $9,025.99 for other deductions and the amount of $219,940.43 deducted by plaintiff for depletion were not correct, but that the sum of $21,348.51 was deductible for donations and the sum of $77,968.20 was deductible for depletion.

Said commissioner allowed a depletion of $0.0886243 per ton of ore for all ore removed from said ore bearing properties of said plaintiff and for each 25c of minimum royalty paid under and by the terms of said leases, such depletion per ton and the total depletion for the year being arrived at as follows:

15 On reserve March 1, 1913, according to the Minnesota tax commission as shown on questionnaire of the Royal Mineral Association ..... tons	191,417,150
Less advance royalty payment by lessees, prior to March 1, 1913 on ..... tons	3,034,258
Net tonnage as of March 1, 1913 ..... tons	188,382,892
Plaintiff's interest, one-sixth ..... tons	31,397,148.7
Total average yearly extraction, 1913 to 1918, inclusive	4,770,000
Maximum life of mine allowed ..... years	40
Interest rate allowed	6%
Royalty rate per ton	25c.
Capital returnable in 40 years	$7,849,287.18
Present worth of interest March 1, 1913	$2,782,551.64
Unit cost per ton, March 1, 1913	0.0886243
Depletion in 1917 ..... tons	1,040,289.4
at .0886243 per ton	$92,194.92

6. That thereafter the commissioner through the medium of a letter written on his behalf of J. G. Bright, deputy commissioner, stated that he was about to assess against plaintiff an amended income tax for the calendar year 1918 based as is shown by said letter upon the conclusion that the depletion to be allowed plaintiff should be increased over the amount stated in the letter of said Alden to $84,979.55 and that plaintiff should be allowed expenses of mining ore of $3,685.11. Said letter further stated that a total tax of $80,136.75 would be assessed against plaintiff. Pursuant to said letter the commissioner assessed the amount of $80,136.75 tax. Thereafter Mabel G. Reinecke, to wit, on September 19, 1924, who was then acting as collector of internal revenue for the first district of Illinois under the provisions of the revenue act of 1918, served on plaintiff a written notice and demand for tax, thereby demanding the payment by plaintiff at her office in Chicago, Illinois, on or before September 29, 1924, of an additional income tax for the calendar year 1918, which was the additional tax assessed as afore-

said and was in the amount of $72,357.83 and interest amounting to $13,144.88. That said notice and demand stated that failure to pay on or before September 29, 1924, the sum demanded as afore-
16 said would cause a 5% penalty to accrue with interest at 1% per month from date due until paid and that failure to pay the sum demanded would cause seizure and sale of the property of the plaintiff to be made.

7. That on, to wit, September 29, 1924, solely to avoid the threatened imposition of said penalties and interest for failure to pay and to avoid persecution and seizure and sale of her property and under duress, compulsion, and coercion, the plaintiff paid to the defendant the sum of $85,502.71 tax and interest so assessed against her and demanded from her as aforesaid as additional tax for the calendar year 1918 and interest thereon; but said payment was made under protest and at the same time plaintiff protested in writing that the assessment of said tax and interest and payment of said tax and interest was unlawful and deprived the plaintiff of rights secured to her by the Constitution of the United States and the revenue acts of the United States and the rules and regulations of the Treasury Department and the Bureau of Internal Revenue.

8. The plaintiff denies the conclusion of the commissioner in said assessment letter of J. G. Bright, deputy commissioner, that the sum of $84,979.55 is the correct amount of depletion to be deducted from the gross income from the said ore mines, and claims the right to deduct from said gross income depletion of $173,822.73, being $88,843.18 more than the amount allowed by the commissioner as depletion. By reason of the allowance of said additional depletion as claimed by plaintiff she claims that the deduction for charitable contributions allowed by the commissioner is excessive and should be $13,856.97 instead of $17,677.72, and that the net income of the said plaintiff subject to tax rightfully amounts to $85,685.33 instead of $171,971.81 as fixed by the commissioner.

9. That after the payment by the plaintiff to the defendant of $85,502.71 additional tax and interest as aforesaid on, to wit, January 20th, 1926, the plaintiff made and filed with the defendant for transmission to the commissioner on application, appeal and claim, No. 843, for the refund of the sum of $62,767.52 of said additional tax and interest so assessed and demanded as aforesaid, in manner and form as provided in section 3226 in the Revised States of the United States, the provisions of law in that regard and the regulations of the Secretary of the Treasury in pursuance of that law. Thereafter, by letter dated 12, 1926, the commissioner rejected said claim in full.

10. That the value or market price of said ore in the
17 ground untouched and unextracted on March 1, 1913, and on all dates subsequent thereto, exceeded the sum of twenty-five cents per ton, so that every ton of ore paid for under said leases in the year 1918 was disposed of at a price actually less than the market price of the ore, and if then sold free of said lease, would

have realized more than twenty-five cents per ton. The actual depletion of the mines by each ton of ore extracted was more than twenty-five cents when extracted.

That under the terms of the law the depletion for ore extracted or considered to be extracted was fixed at the market value of the ore in places in the mine at the time and place of extraction, but if such depletion allowance per ton exceeded the amount fixed as the royalty per ton in the lease, the depletion allowance to the plaintiff could not exceed such royalty, but since the royalty when paid included an amount of interest on the payment considered as deferred from March 1, 1913, to the date of actual payment of royalty and the allowance of such depletion in successive years could never exceed the market value of the ore in the mine on March 1, 1913.

That each payment for ore extracted consisted of two parts, one of which was interest on the deferred payment and the other of which was the actual present worth of the payment deferred from March 1, 1913. Said actual present worth is accurately represented for each ton by that sum which put at interest on March 1, 1913, would produce at the date of payment for ore the royalty paid per ton; to put it in another way, the actual present worth of the ore extracted is accurately ascertained by taking from the royalty per ton paid the part of the royalty, when and as paid, which represented interest on the deferred payment from March 1, 1913.

That such an allowance of depletion in successive years and in the year 1918 did not and could not exceed the market value of such ore on March 1, 1913.

That the method of calculating the depletion followed by the Government taxing body assumed the average present worth of the ore extracted for all the years, as the present worth of the ore extracted in each particular year and asserted that a payment for ore made in 1918, upon which the seller had waited for payment less than four years, was made up of precisely the same amounts of principal and interest as that for ore upon which the seller had been or would be compelled to wait for from twenty to forty years; that there was precisely as much interest in a payment of twenty-five
18 cents per ton deferred for four years as in a payment of twenty-five cents per ton deferred for forty years.

The Government arrived at the present worth as of March 1, 1913, substantially in the following manner, to wit:

The total value of the ore was found by multiplying the total tonnage as estimated by the Minnesota Tax Commission by the 25c royalty fixed by the lease. This sum was divided into forty years. It was assumed that one such part would be received by the taxpayer in each year of the estimated life of the mine. Each sum was then discounted at the rate of 6% for the period of time which would elapse between March 1, 1913, until same would be received by the taxpayer. After deducting the discount the remaining sums were added and the resulting amount was assumed to be the present worth.

Conceding that such method is a correct one, it follows that the present worth of ore extracted in any one year is definitely ascertained, and that the ore extracted in different years has a different present worth and therefore a different value to the taxpayer. On the Government's own theory, as presented above, the unit of depletion can not properly be averaged for all the years.

That the Government's calculation admits that the present worth of the ore in a particular year was the amount for which depletion should be allowed, but disregards the terms of the lease by treating the ore as sold on March 1, 1913, at the averaged present worth for all the years of the lease.

That the present worth as of March 1, 1913, of the ore cannot be accurately determined under the leases until the ore is actually extracted and the date of payment therefor thereby determined.

That the Government's system of figuring the present worth for the purpose of determining depletion as fixed in the sum exacted from the plaintiff as income tax requires assumptions, not one of which if justified, namely, first that precisely the same amount of ore will be extracted each year; second, that the mines have an arbitrary life of the term of each lease; third, that the exact amount of ore in the mine will be extracted precisely with the expiration of the term of the lease.

That the Government's method of determining the present worth as of March 1, 1913, and from that the depletion unit requires the use of a 6% rate of discount. The taxpayer maintains that such rate of discount is unreasonably large and is not the proper reasonable and prevailing rate in such a case as is here involved, even
19 though it may be in the case of mines operated by the taxpayer. The reason is that the taxpayer has none of the hazards of the ordinary operating mine owner. Here the ore is worth in the market upwards of $1.00 per ton, the royalty is but 25c. per ton; it is a necessary product in the industrial life of the Nation; the lessees are financially beyond question, and even though they were to fall into financial difficulties, these leases, being assets of great value, would under any conceivable circumstances be surrendered. Therefore such properties are comparable with the very best of non-tax exempt securities, the prevailing rate of interest on which is about five per cent.

The amount of the interest rate being determined the correct method of figuring depletion requires the determination of only one fact fully ascertained before the return of the taxpayer is made, viz, the date of payment for ore.

That if of each payment or each ton of ore extracted, the amount of such payment which represents interest on the payment as deferred and actually paid, be figured, the income of the owner will be accurately determined as that part of the twenty-five cents, which represents interest.

That for the year 1918 a correct calculation under the rule above shows that upon the tons of ore extracted and paid for on January 10, 1918, of the payment of 25c. per ton $0.2011 was for selling price or principal and $0.0489 was interest on the deferred payments and that on the 252,502.88 tons extracted the plaintiff was entitled to depletion of $50,778.82; that upon the ore paid for on April 10, 1918, $0.1991 was for selling price or principal and $0.0509 was interest on the deferred payments and that on the 48,958 tons extracted the plaintiff was entitled to depletion of $9,748.90; that on the ore paid for on July 10, 1918, $0.1972 was for selling price or principal and $0.0528 was interest on the deferred payments and that on the 221,-165.84 tons extracted plaintiff was entitled to depletion of $43,607.14; that upon the ore paid for on October 10, 1918, $0.1952 was for selling price or principal and $0.0548 was interest on the deferred payments and that on the 356,954.64 tons extractd the plaintiff was entitled to depletion of $69.687.87; that plaintiff is entitled to depletion amounting for the year 1918 to $173,822.73.

Therefore the plaintiff's income subject to tax amounted to $85,-685.33 and the tax which was properly due was $24,261.84. Having previously paid a tax of $7,778.92 there was rightfully due from the plaintiff the sum of $16,482.92 additional tax, and she was by the enforced payment complained of required to pay $55,-874.91 more tax than she should have paid.

That there was rightfully due from plaintiff as interest the sum of $2,991.69 instead of $13,144.88, and plaintiff was required to pay $10,153.19 more than she should have done.

11. That the said returns were not wilful, false or fraudulent and did not contain any wilful understatement or undervaluation.

12. Wherefore, defendant became on, to wit, September 29, 1924, indebted to plaintiff in the sum of $65,028.10, for money received by defendant and held by the defendant to the use of the plaintiff, and thereupon on the last day aforesaid an obligation arose under a promise implied in law to pay said sum to the plaintiff with interest thereon at the lawful rate on the part of the defendant and said promise so arisen by implication of law is the promise of the defendant now sued in this action.

Yet the defendant not regarding her said promises has not paid the said sum of $65,028.10 or any part thereof to the plaintiff but has wholly refused to the damage of the plaintiff in the sum of $100,-000.00, and therefore she brings this suit, etc.

JOHN M. ZANE,
HENRY A. GARDNER,
ALFRED T. CARTON,
URBAN A. LAVERY,
Attorneys for Plaintiff.

[File indorsement omitted.]

In United States District Court

Plea

Filed Dec. 27, 1926

Now comes the above-named defendant, Mabel G. Reinecke, collector of internal revenue of the United States of America for the first collection district of Illinois, by Edwin A. Olson, United States attorney, her attorney, and defends the wrong and injury,
21 when, etc., and says that she did not promise in manner and form as the plaintiff has above thereof complained against her, and of this the defendant puts herself upon the country, etc.

(Signed) EDWIN A. OLSON,
United States Attorney.

[File indorsement omitted.]

In United States District Court

Minute entries

Thursday, May 3, 1928

Motions to instruct jury

Present: Honorable JAMES H. WILKERSON, judge of said court

This cause being called for trial come the parties to this suit by their attorneys, respectively, and issues being joined herein it is ordered that a jury come whereupon come the jurors of a jury of good and lawful men, to wit: Morris Brown, Leo Feeney, Henry E. Miller, Edward J. Dillon, Hugh Mitchell, E. Lahey, Oscar Siegel, John P. Moehling, Joe Haggerty, Henry Raber, A. N. Robert, H. Brower, who are duly elected, impaneled, and sworn herein a true verdict to render according to the evidence, and thereupon at the close of plaintiff's opening statement the defendant by her attorney moves the court to instruct the jury to find the issues for the defendant whereupon the plaintiff's attorney moves the court to instruct the jury to find the issues for the plaintiff which motions are hereby heard and continued to 10 a. m. May 4, A. D. 1928.

It is further ordered that said jury be permitted to separate until 10 a. m. May 4, A. D. 1928.

22 *Order overruling motions to instruct jury*

Friday, May 4, 1928

Present: Honorable JAMES H. WILKERSON, judge of said court

This cause coming on to be heard upon the plaintiff and defendant's motions at the close of plaintiff's opening statement for the

court to instruct the jury, and the court having heard arguments of counsel and being now fully advised in the premises said motions are overruled and denied to which ruling of the court the plaintiff and defendant by their attorneys here and now duly except.

Order granting leave to amend declaration

Friday, May 4, 1928

Present: Honorable JAMES H. WILKERSON, judge of said court

This day again come the parties to this suit by their attorneys respectively, and the jury heretofore impaneled herein for the trial of said cause also come and thereupon on motion of plaintiff's attorney, it is ordered that leave be and the same is hereby given the plaintiff to amend instanter the declaration filed in said cause on its face and thereupon at the close of all the evidence the defendant and the plaintiff by their attorneys enter herein their motion for the court to instruct the jury, which motion is entered and continued to May 8, A. D. 1928, for disposition.

It is further ordered that said jury be permitted to separate until 10 a. m. May 8, A. D. 1928.

23 In United States District Court

Defendant's motion to instruct jury

Filed May 8, 1928

Defendant moves the court to instruct the jury that under the pleading and evidence in this case there is not sufficient evidence to entitle the plaintiff to recover and the verdict must be for the defendant because:

1. There is no legally sufficient evidence to show the fair market value as of March 1, 1913, of the plaintiff's interest in each of the mines involved in this action.

2. There is no legally sufficient evidence to show the tonnage known or estimated remaining in the respective mines as of December 31, 1916, December 31, 1917, December 31, 1918, and December 31, 1919, respectively.

3. The undisputed evidence shows that the method for calculating depletion allowance used by the plaintiff does not result in reasonable allowance.

4. The undisputed evidence shows that the method of calculating depletion allowance used by the plaintiff is not in compliance with the regulations of the Commission of Internal Revenue duly promulgated.

5. The undisputed evidence shows that the allowances computed by the plaintiff are not a percentage of his capital invested equal to

the percentage of the whole mineral content withdrawn during the year, and are not a percentage of his capital investment equal to the percentage of the unpaid royalties paid during the year for which the calculation is made.

6. And for other good and sufficient reasons.

24 In United States District Court

Plaintiff's motion to instruct jury

Filed May 8, 1928

Now comes the plaintiff at the close of all the evidence, the defendant having made a motion that the jury be peremptorily instructed to return a verdict for the defendant of no cause of action, and the plaintiff moves the court to instruct the jury to return a verdict in favor of the plaintiff and to find the plaintiff's damages against the defendant at the sum of one hundred eighteen thousand forty-three and 21/100 dollars ($118,043.21) for principal and interest to this date. Said motion for plaintiff is based upon the ground that the evidence for the plaintiff shows without contradiction that plaintiff is entitled to recover herein and the evidence shows without contradiction that the amount of recovery should be the sum stated, and that defendant has offered no competent material and relevant evidence to raise any issue of fact.

And both plaintiff and defendant having so moved, the plaintiff submits the cause to the court for its finding and decision.

Dated May 4, 1928.

_____ _____,
_____ _____,
Attorneys for Plaintiff.

[File indorsement omitted.]

25 In United States District Court

Verdict returned in open court

Filed May 8, 1928

We, the jury, find the issues for the plaintiff and assess the plaintiff's damages at the sum of one hundred eighteen thousand forty-three dollars and twenty-one cents.

LEO J. FEENEY.
HENRY E. MILLER.
HENRY BROWER.
MORRIS M. BROWN.
EDWARD J. DILLON.
ARTHUR N. ROOT.
EDWIN LAHEY.
HUGH MITCHELL.
HARRY RABER.
J. J. HAGGERTY.
JOHN P. MOEHLING.
OSCAR SIGEL.

In United States District Court

Judgment

May 8, 1928

This day again come the parties to this suit by their attorneys, respectively, and the jury heretofore impaneled herein for the trial of said cause also come thereupon this cause coming on to be heard upon the defendants motion for a directed verdict after arguments of counsel and due deliberation by the court said motion is overruled and denied and thereupon on motion of plaintiff's attorney the court instructs the jury to find the issues for the plaintiff and assess the plaintiff's damages to the sum of one hundred eighteen thousand forty-three dollars and twenty-one cents ($118,043.21)
26 and the jury say: We the jury find the issues for the plaintiff and assess the plaintiff's damages at the sum of one hundred eighteen thousand forty-three dollars and twenty-one cents ($118,043.21) in form as aforesaid by the jury assessed and have execution therefor whereupon the defendant enters herein her motion for a new trial in said cause which motion is overruled and a new trial denied whereupon the defendant enters herein her motion in arrest of judgment which motion is also overruled and denied to which ruling of the court the defendant here and now duly excepts and sixty days time from this date is allowed the defendant within which to file her bill of exceptions herein.

In United States District Court

Stipulation re extension of time

Filed July 3, 1928

It is hereby stipulated and agreed, by and between the parties to the above-entitled cause, by their respective attorneys, that the time for the defendant Mabel G. Reinecke, collector of internal revenue for the first district of Illinois, to present and settle the bill of exceptions and to have the same approved and filed in the above entitled cause be extended to and including August 6, 1928.

GEORGE E. Q. JOHNSON,
United States Attorney,
Attorney for Defendant,
JOHN M. ZANE,
HENRY A. GARDNER,
ALFERD T. CARTON,
URBAN A. LAVERY,
Attorneys for Plaintiff.

[File indorsement omitted.]

27 In United States District Court

Order extending time

July 3, 1928

On motion of defendant and pursuant to stipulation signed by the parties, it is hereby ordered that the time for the defendant Mabel G. Reinecke, collector of internal revenue for the first district of Illinois, to present and settle the bill of exceptions and have the same approved and filed in the above-entitled cause be extended to and including August 6, 1928.

Enter:

JAMES H. WILKERSON,
United States District Judge.

In United States District Court

Order incorporating original bill of exceptions

July 13, 1928

On motion of defendant, it is hereby ordered that the original bill of exceptions may be incorporated in the record on appeal to the United States Circuit Court of Appeals for the Seventh Circuit in this cause in lieu of a copy thereof.

Enter:

JAMES H. WILKERSON,
Judge of the United States District Court for the Northern District of Illinois, Eastern Division.

28 In United States District Court

Bill of exceptions

Filed July 13, 1928

Caption

Be it remembered that heretofore, towit, on the 3rd day of May, A. D. 1928, being one of the days of said term of said court, before the Hon. James H. Wilkerson, one of the judges of said court, and a jury, this cause came on for trial upon the pleadings heretofore filed herein.

Henry A. Gardner, Messrs. Zane, Morse & Norman, by John M. Zane, appeared for plaintiff; George E. Q. Johnson, United States attorney, by Dwight H. Green, special assistant United States attorney, and Thomas H. Lewis, appeared for defendant.

And thereupon the plaintiff, to maintain the issues on her part introduced the following evidence:

HENRY A. GARDNER, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. ZANE:

Am forty-five years old and live at 845 Bryant Avenue, Winnetka, Cook County, Illinois. Am an attorney at law and am acquainted with the plaintiff, Eudora Hull Spalding, and have represented her for about fifteen or sixteen years. I am acquainted with the facts in regard to the matter in dispute in this case. I have the original income-tax returns filed by the plaintiff for the years 1917 and 1918, the same having been delivered to me by counsel in this case.

Q. Now, the papers which you have in your hand are respectively the income-tax return for 1917 and 1918?

A. 1917 and 1918; yes, sir.

Mr. ZANE. If your honor please, we will ask the reporter to make the return for 1917 as plaintiff's Exhibit A and the return for 1918 as plaintiff's Exhibit B and we offer——

Mr. LEWIS. Just a minute before you do that. I want to have photostats marked instead because these official papers.

Mr. ZANE. All right. He wants to put in the photostats, and we have no objection.

29 The COURT. You may offer the original and it will be received and it will be understood that photostatic copies of the same may be used in lieu of the original.

Mr. LEWIS. I just did not want the originals marked; that is all.

Mr. ZANE. Well, that is just what we want to show, that the originals are produced.

Mr. LEWIS. Well, all right. Go ahead.

Mr. ZANE. It won't do any harm.

The COURT. If he does not want the original marked, the record will show that upon the introduction of the originals, counsel for the United States produced photostatic copies of the same and it is agreed they are the same, and the copies may be marked with the same effect as though they were the originals.

Mr. LEWIS. The statute provides for that.

Mr. ZANE. That will be satisfactory. We will ask the reporter to mark the substituted copies as photostatic copies of the return for 1917 as "Plaintiff's Exhibit A" and the return for 1918 as "Plaintiff's Exhibit B," and we offer them in evidence, your honor.

The COURT. They will be admitted.

(Said documents so offered are admitted in evidence marked "Plaintiff's Exhibits A and B," respectively.)

WITNESS. I am familiar with the amounts received by the plaintiff in the years 1917 and 1918 and the dates when they were received. I am also familiar with the fact that these amounts were received by the plaintiff under the terms of certain leases at the rate of 25c.

per ton. During the year 1917 the plaintiff received $260,072.30. The total tonnage would be four times this figure and six times that. During the year 1918 the plaintiff received $219,940.43, and the total would be four times that and the total tonnage on entire mines would be six times that. The amounts were paid on January 10, April 10, July 10, and October 10, in different amounts, depending on the extraction of the previous quarter. I have the quarterly returns that make up the total. The plaintiff received amounts as follows:

January 10, 1917	$82,626.93
April 10, 1917	12,239.58
July 10, 1917	57,772.68
October 10, 1917	108,031.55
January 10, 1918	63,125.72
April 10, 1918	12,239.54
July 10, 1918	55,291.46
October 10, 1918	89,238.66

30 In 1917 the total tonnage extracted was 6,256,098 and the plaintiff had an undivided one-sixth interest in that. In 1918 there was a total extraction of 5,278,570 tons, the plaintiff's share being one-sixth of that.

JOHN A. SAVAGE, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. ZANE:

Live at Duluth, Minnesota. I have lived in Hibbing, Minnesota, and Duluth, Minnesota, for twenty-one years. I am forty-four years old. From 1907 until 1914 I lived in Hibbing and I was general superintendent and general manager of the Shenango Furnace Company, a Pennsylvania company, operating several iron mines at Hibbing and vicinity. Since then I have lived in Duluth, and I have been in business for myself under the name of John A. Savage & Company, developing iron mines, selling iron ore, and conducting a general iron mining business. I have been acquainted with the selling and mining of iron ore in the so-called iron ranges of Minnesota, the Mesaba Range, the Cuyuna Range, and somewhat on the Vermillion Range.

I am acquainted with the ground or land contained in the leases mentioned in this case and made by the co-owners, one of whom was Mrs. Spalding, upon certain iron lands in Minnesota. Those lands are situated at Hibbing, Minnesota, on the Mesaba Iron Range. I lived in Hibbing for seven years, and during that period I was in charge of one of the properties in this situation; lived on it and walked across these other properties two to six times a day for seven years. I was quite familiar with it. I am familiar with the grade of iron ore that comes out of that ground, and which was coming out in those years and since that time. The grade of iron ore in those lands with reference to the phrase used in the leases "merchantable iron ore" was unusually good merchantable ore. That iron ore carried approximately 54 natural units of iron out of a possible 100, or 54 per cent. That is classed in the trade of selling

iron ore as exceptionally high grade. I was acquainted with the market value of iron ore by the ton in the mine untouched and without any labor put upon it on the date of March 1, 1913.

Mr. LEWIS. That is all right.

Mr. ZONE. Yes; that is the heart of it. He objects to it.

31 Mr. LEWIS. Well, I do not object to his answering, yes, that he knows it.

WITNESS. I know it.

Mr. ZONE. He knows it. All right.

Q. What was the market value?

Mr. LEWIS. Just a minute.

Mr. ZANE. That is the point.

Mr. LEWIS. I ask counsel to state the purpose of this evidence.

Mr. ZANE. The purpose is to conform to the law, which is that we must present to the court, in order to measure the depletion, the market value of the ore in the ground untouched and unextracted on March 1, 1913, to show the original cost, value, market value on that date.

The COURT. I overrule the objection for the present.

Mr. LEWIS. Note an exception.

The COURT. If upon the argument of the case, at the close of the evidence, I feel I should rule in your favor, I can very readily strike it out.

Mr. ZANE. Yes.

The COURT. He may answer the question.

Mr. ZANE. Q. I asked, was that market value of this iron ore on March 1, 1913?

A. At least 25 cents per ton.

Q. Now, did that value—as to the year of 1917, throughout that year, do you know the market value of the iron ore of the description of these mines by the ton at that place in the market?

Mr. LEWIS. Answer yes or no.

A. Yes, sir.

Mr. ZANE. He says yes. What was that value?

Mr. LEWIS. Now, we object to that.

The COURT. Overruled.

Mr. LEWIS. Exception.

A. At least 25 cents per ton.

Mr. ZANE. Q. What was the—are you acquainted with the market value in 1918, throughout the year?

A. Yes, sir.

Q. What was that value?

Mr. LEWIS. Object to that question.

The COURT. Overruled.

A. At least 25 cents per ton.

Mr. LEWIS. Note our exception.

Mr. ZANE. Q. Now, in the intervening time from March

32 1, 1913, up to 1917, do you know the market value of what I have stated?

A. Yes, sir.

Q. What was that market value?

Mr. LEWIS. Objected to.

The COURT. Overruled.

A. At least 25 cents per ton.

Mr. LEWIS. The court ruled on that objection, did he not?

The COURT. Yes, and your exception may be noted.

Cross-examination by Mr. LEWIS:

Q. You say the March 1 value of this ton of ore, March 1, 1913, value of a ton of ore, was at least 25 cents?

A. Yes, sir.

Q. You do not mean by that that Mrs. Spalding's interest in that ton of ore was worth at least 25 cents, do you?

A. The question asked me by Mr. Zane did not involve any lease, as I understood the question.

Mr. ZANE. Just the ton of ore.

Mr. LEWIS. Q. I mean, you do not mean to testify that Mrs. Spalding's interest in that ton of ore as of March 1, 1913, or at any other time, was worth 25 cents or any other sum?

Mr. ZANE. We object. That is calling for a legal conclusion.

The COURT. I suppose he meant to testify precisely as he has testified, as to the value of the ore, as such, without reference to who owned, how many interests there were in it, simply the value of the ore.

Mr. ZANE. That is all. We are not talking about Mrs. Spalding; she either had one-sixth of each ton or one-sixth of all the tons.

The COURT. He testified to the value of the ore.

Mr. LEWIS. The court refuses to permit that question to be answered?

The COURT. He may answer it.

Mr. ZANE. I have an objection to the question.

The COURT. I overrule the objection.

Mr. LEWIS. Note our exception.

The COURT. I am ruling in your favor.

Mr. LEWIS. Oh, you are admitting it?

Mr. ZANE. The witness had already said that that was a statement without reference to any lease or anything.

The COURT. Read the question.

33 (Question read.)

A. That question is based upon Mrs. Spalding's one-sixth ownership of a lease at 25 cents per ton. That question is an entirely different one from the one asked me by Mr. Zane. It would require a good deal of calculation and certain assumptions as to how fast that ore would be shipped. Then it would require discounting against those assumptions to present value. That calculation would take time, and I can not answer that without working it out.

The COURT. Q. You were merely testifying as to the value of the ore?

A. Regardless of who owned it or what lease or anything else, there might be on it; just that tonnage in place as real estate, in the ground.

Q. I so understood it.

A. Yes, sir.

Mr. Lewis. Now, if the court please, I do not know whether it is necessary; I am simply trying to protect this record, and for that reason I make a motion to strike out this evidence relating to the value of the ton of ore.

The Court. The objection is overruled.

Charles L. Keith, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. Zane:

Reside at Madison, Wisconsin. Am a geologist, chairman of the department of geology at the University of Wisconsin, and consulting geologist in connection with mining. For twenty-five years my general consulting practice has related largely to iron ores in North America, South America, and western Europe. During that time I also acted in consulting capacity to various State and Government organizations in which iron ore figured. I was consulting geologist and appraiser of the Michigan State Tax Commission and for the Wisconsin State Tax Commission. I was consulting geologist for the War Industries Board for the American Commission to Negotiate Peace in Paris, and am now serving in that capacity for the Bureau of Mines and the United States War Department. I was on the United States Geological Survey in regard to Lake Superior, more particularly the iron ore of the Lake Superior region. Leading to the publication of Government maps and
34 reports on that district I was the author of the report on the Mesaba district in Minnesota, the range which contains the Hibbing mines and which are now in question. I was also joint author of the general report of the entire region. For a number of years I have acted in a consulting capacity in regard to exploration and development and valuation of Lake Superior mines and at the present time am acting as consulting geologist for forty of them. I stated my knowledge of the particular mines that the plaintiff, Mrs. Spalding, was interested in on the Mesaba Range in some detail in the preparation of the Government report, Geological Survey report on the Mesaba district, and since that time I have been generally familiar with them, having been in the mines at intervals through a great many years.

I know, generally speaking, of the quality of the iron ore in the mines of Mrs. Spalding. It was a standard high grade of iron ore. I have heard the testimony about the amount of iron ore extracted. I can tell you from my knowledge and experience the value, and by value I mean the market value of the ore in Mrs. Spalding's ground untouched and unextracted on the first day of March, 1913.

Q. What was that market value?
Mr. LEWIS. We object to it.
The COURT. Overruled.
Mr. LEWIS. Exception.
A. Well above 25 cents per ton.
Mr. ZANE. I will ask a general question to shorten it; it may be somewhat leading; if you object I will withdraw it.
Mr. LEWIS. We won't object on the ground it is leading.
Q. Now, are you acquainted with the market value in the year 1917 at that place?
A. Yes.
Q. What was that market value?
Mr. LEWIS. Object.
The COURT. Overruled.
Mr. LEWIS. Exception.
A. At least as much as in 1913.
Mr. ZANE. Q. Were you acquainted with the value in the year 1918 at that place, of that ore?
A. I was.
Q. And what was that value?
Mr. LEWIS. Objection.
The COURT. Overruled.
Mr. LEWIS. Exception.
Mr. ZANE. Q. Answer it.
A. At least as much as in 1913.
35 Q. And were you acquainted with the value of that ore between March 1, 1913, and the beginning of 1917?
A. Yes.
Q. And what was that value?
Mr. LEWIS. Objection.
The COURT. Overruled.
Mr. LEWIS. Exception.
A. The same.

Cross-examination by Mr. Lewis:

Mrs. Spalding's interest in a ton of ore was not necessarily as of March 1, 1913, of the fair market value of over 25c. a ton. In testifying as to the value of a ton of ore I was not speaking of Mrs. Spalding's interest, or of anyone's interest. I was speaking of the value of a ton of ore regardless of ownership. I do not know of my own knowledge what Mrs. Spalding's interest of a ton of ore was as of March 1, 1913.

Mr. LEWIS. All right. That is all. I make a motion to strike that testimony of Dr. Leith's on the same ground.
The COURT. Overruled.
Mr. LEWIS. Note our exception.
The COURT. Proceed.

EDWARD L. IVES, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. Zane:

Reside at Wilmette, Illinois. Have resided there for four years. My age is fifty. From 1900 until 1906 I was in the engineering department of the Newport News Shipbuilding & Dry Dock Company. In 1906 I entered the blast furnace department of the Illinois Steel Company at South Chicago. I stayed there until 1912, when I accepted a position as blast furnace manager for the Iroquois Iron Company, South Chicago. That company was sold in 1916 to the Steel & Tube Company of America. I contained as blast furnace superintendent until March, 1920, when I resigned. I then entered the employment of the Miami Metals Company as a consulting engineer, specializing in the manufacture of pig iron. In 1923 H. A. Prassett and myself formed the consulting firm of H. A. Prassett & Company. I am vice president of that company now, consulting engineer specializing in the manufacture of pig iron.

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The duties of a blast-furnace superintendent require him to purchase the ore which he uses. I have been actively purchasing ore from 1912 to date. Since being in the consulting business, we have purchased for various companies, some of them being the Tonowonda Iron Corporation, the Clair Furnace Company, and the A. M. Byers Company. I am acquainted with the Susequehanna mine, one mine of the group under discussion, and was consulting engineer for the operator of that mine for five years. I was acquainted with the quality of iron ore in that mine. It was standard grade Mesaba ore. It would average about 49.5 per cent units of iron in the natural state. About one-third of the ore in there was a Bessemer grade—that is, low phosphorus. In that particular mine the iron ore was 49.50, which you would say is a high-grade ore, but a penalty ore, due to the fact that the ore naturally was below the base of 51.50. It was not like the Hull-Rust and the others which are very high-grade ore. It was an open-pit mine; that is, the overburden had been removed and the ore was loaded by steam shovel into the cars. That is the cheapest method of working.

Q. Now, are you able to tell us from your experience that you have described, what the value of that tonnage was in these mines by the ton on the first day of March, 1913?

A. It was more than twenty-five——

Mr. LEWIS. Wait just a minute. Yes or no.

Mr. ZANE. Q. Yes or no; do you know?

A. Yes.

Q. Then what was that value?

Mr. LEWIS. We object to that.

A. More than 25 cents a ton.

Mr. ZANE. Wait just a moment. Give them a chance. He wants to object. I have asked him what was the value, and he has made his regular objection.

Mr. LEWIS. We have objected to the witness——

The COURT. Objection overruled.

Mr. LEWIS. Exception.

Mr. ZANE. Q. What was the value?

A. More than 25 cents a ton.

Q. And you mean by that the ton in the mine untouched and unextracted?

A. Yes.

Q. Now, can you tell us what that value was between March 1, 1913, and the end of 1918, all during that period?

37 A. More than 25 cents.

Mr. LEWIS. Wait a minute. Yes or no.

Mr. ZANE. Q. Just yes or no.

A. Yes.

Q. Then he gets his chance, you see. How much was that value?

Mr. LEWIS. We object.

The COURT. The objection is overruled.

Mr. LEWIS. Exception.

Mr. ZANE. Q. Now you can answer.

A. More than 25 cents a ton.

Cross-examination by Mr. LEWIS:

I do not know what the value of Mrs. Spalding's interest in any ton of ore would be.

HENRY A. GARDNER, recalled as a witness on behalf of the plaintiff, having been previously sworn, testified as follows:

Direct examination by Mr. ZANE:

I have seen the original leases upon this land that is spoken of here in the evidence. I have those leases.

Mr. ZANE. We offer in evidence this lease, plaintiff's Exhibit C, and the lease on tract 8 we ask to have market "Plaintiff's Exhibit D," and we offer that in evidence; and the lease on tract 9, which we will ask to have marked "Plaintiff's Exhibit E, we offer in evidence; and the lease on tract 10, which we will ask to have marked "Plaintiff's Exhibit F" and will offer that in evidence; and the lease on tract 11, marked "Plaintiff's Exhibit G," we offer in evidence; and the lease on tract 12, "Plaintiff's Exhibit H," we offer in evidence; and the lease on tract 13, "Plaintiff's Exhibit I," we offer in evidence.

(Said documents so offered were admitted in evidence, marked "Plaintiff's Exhibits C, D, E, F, G, H, and I.")

Mr. ZANE. I think we will ask here—we had better ask to substitute copies instead of the originals, your honor. The original papers ought really to be kept, I suppose; they might get mixed up in the record.

The COURT. If there be no objection.

Mr. LEWIS. All right.

WITNESS. The original tax return of Mrs. Spalding was
38 made out in my office, under my supervision. I was acquainted with the items in it.

Q. Now, in that tax return, in regard to that tax return I wish you would state whether or not that was made under your advice as to the items that should go in there?

A. Mrs. Spalding, together with other owners of mineral lands, was uncertain as to what deductions should be made for depletion, and they consulted—I do not know exactly whom they consulted, but it was some attorneys acting for the group, and they advised the——

Mr. LEWIS. Now, what do you want to prove by him?

Mr. ZANE. That she made the original return in good faith, without any intention of defrauding; that is all.

Mr. LEWIS. We admit that.

Q. Now, have you there the copy of the letter of the revenue agent dated July 13, 1922?

A. I have.

Mr. ZANE. We will ask to have that marked "Plaintiff's Exhibit J," and offer it in evidence.

Mr. LEWIS. I ask for what purpose it is offered.

Mr. ZANE. To show how the return was finally settled and the items, so that there would be no question about it.

Mr. LEWIS. We object to the offer.

Mr. ZANE. And it is the document upon which the additional assessment that she was compelled to pay was founded.

The COURT. What is the objection?

Mr. LEWIS. The objection is, it is not binding on the commissioner. It is from the revenue agent, this letter they propose to introduce.

The COURT. Is it the position of the United States that the computation stated in the letter of the revenue agent is erroneous?

Mr. LEWIS. It is not a computation that was finally made.

Mr. ZANE. Well, we want to show how it was done.

The COURT. Is that the only purpose for which it is offered?

Mr. LEWIS. We object.

The COURT. As merely showing one link in the chain of events making the assessment?

Mr. ZANE. We do not say they are bound.

The COURT. Of course, it is not binding on the commissioner.

Mr. ZANE. The commissioner actually fixed it.

The COURT. For the limited purpose for which it is offered, it may be received.

Mr. LEWIS. Now, may I state my objection in the record?
39 Counsel states that he offers the revenue agent's report for the purpose of showing the method used by the commissioner in determining the depletion allowance made in these cases. The defendant objects to the admission on the ground, first, that the method used by the revenue agent has no tendency to show the

method used by the commissioner; and secondly, that the method used by the commissioner is entirely immaterial in this case.

The COURT. The method used by the commissioner?

Mr. LEWIS. Yes.

The COURT. You say the method used by the commissioner?

Mr. LEWIS. Yes.

Mr. ZANE. Why, who does assess this tax?

Mr. LEWIS. Why, the question is simply whether or not the allowance made is right or wrong. That is the question in this case.

The COURT. Who made it?

Mr. LEWIS. It does not make any difference how it was made.

The COURT. I do not understand that counsel is offering it—the only purpose stated by counsel is as he stated. I do not understand he offers it as showing the method by which the tax was fixed; he is offering it here as one step in the process of arriving at how the tax was assessed, in order that the subsequent proceedings in the office of the commissioner may be intelligible.

Mr. ZANE. Yes, sir; you are right.

The COURT. As I understand the objection of the United States, it does not state accurately. For the purpose for which it is offered the objection will be overruled.

Mr. LEWIS. Note our exception.

(Said document so offered and admitted in evidence was marked "Plaintiff's Exhibit J.")

Mr. ZANE. We will ask to have this letter of the commissioner marked "Plaintiff's Exhibit K," and we offer it in evidence.

Mr. LEWIS. Now, you do not offer this as to 1916?

Mr. ZANE. No; it is 1917 this is offered for.

The WITNESS. It covers both '16 and '17.

Mr. ZANE. Well, but '16 does not have anything to do with it.

Mr. LEWIS. I haven't any objection.

(Said document so offered and admitted in evidence was marked "Plaintiff's Exhibit K.")

Mr. ZANE. We next offer in evidence the letter of——

A. It is a letter of the revenue agent.

Mr. ZANE. Internal-revenue agent in charge, dated June 20, 1922.

Mr. LEWIS. That is, enclosing the report.

Mr. ZANE. Yes; and the report that is enclosed with that letter; it is all pinned together here.

Mr. LEWIS. This is not complete.

Mr. ZANE. Yes; it is.

Mr. LEWIS. You want '17, don't you?

The WITNESS. That includes '17 and '18.

Mr. LEWIS. This is only those two years.

The WITNESS. No; I think there is another yet in there; two, isn't there? I think '19 is included, and I think '20 is included.

Mr. ZANE. Disregard 1919.

Mr. LEWIS. You offer the report and that part of the letter relating to 1917 and 1918?

Mr. ZANE. 1917 and 1918. I didn't know there was 1919 in there. Please mark this "Plaintiff's Exhibit L."

(Said document so offered and admitted in evidence was marked "Plaintiff's Exhibit L.")

Mr. LEWIS. This is a report just like the other one, and it is, of course, I suppose, admitted?

The COURT. Admitted for the same purpose.

Mr. LEWIS. Admitted for the same purpose.

Mr. ZANE. We next offer the undated——

The COURT. It is not offered as binding on the commissioner. It is just offered to make understandable the other proof.

Mr. LEWIS. That does not make a particle of difference.

Mr. ZANE. But you cannot get at the figures unless you have these in evidence.

Mr. LEWIS. His contention is that the commissioner's figures are wrong.

The COURT. Your point is, it is upon an entirely different theory. The court will not invalidate the result merely because of that if it could be sustained on any theory.

Mr. LEWIS. No; the position I am taking is this: Mr. Zane does not contend that the result is incorrect, if the commissioner's method is correct. He is not attacking the result if the method is
41 correct. He says that some other method should be applied. Now, if the purpose of these exhibits is to show that the commissioner made a mistake in applying his own method, then I am objecting.

Mr. ZANE. We next offer in evidence the undated letter of the commissioner and the statement therein enclosed which has a certificate, denominated a certificate of overassessment.

Mr. LEWIS. What year is that, 1917?

Mr. ZANE. 1917, yes. And we ask the reporter to have that marked "Plaintiff's Exhibit M."

(Said document so offered was admitted in evidence, marked "Plaintiff's Exhibit M.").

Mr. ZANE. Q. Now, this last document, plaintiff's Exhibit M, is the one that was paid, was it?

A. That was the one that was——

Q. Paid for 1917?

A. Yes.

Q. Now, have you——

A. Letter of overassessment for the year 1918 with statement.

Q. Is the check for both years? Does the check include both?

A. No; they were paid separately.

Q. Well, the, I will introduce now the check on 1917. Have you the check Mrs. Spalding paid?

A. I have the check of Gardner & Carton, paid on her directions.

Q. Paid on her direction, and this is the document that paid the Government?

A. That is the cancelled check.

Mr. ZANE. We offer this check in evidence, being a check for the sum of $39,480.22.

The WITNESS. That check includes interest as well as the assessment.

Mr. LEWIS. That is the payment of this $33,487.09 assessment?

The WITNESS. Yes.

Mr. ZANE. And the rest of it is interest?

The WITNESS. The rest of that check is interest. Mr. Reporter, please mark that "Plaintiff's Exhibit N" and we offer it in evidence.

(Said document so offered was admitted in evidence, marked "Plaintiff's Exhibit N.")

Mr. ZANE. Q. Now, as to the year 1918, all the documents that have been offered except one refer to 1917?

42 A. No; that is not quite correct. Some of these documents include the year 1917 and 1918 in the report.

Q. Well, only one, I think, so far as I know, but if there are more, they will show. Have you any of the preliminary documents regarding 1918?

A. There is a letter of November 10, 1920, covering the year 1918, the tax for the year 1918.

Mr. ZANE. Yes. We offer this letter in evidence, dated November 10, 1920.

(Said document so offered was admitted in evidence marked "Plaintiff's Exhibit O.")

Mr. ZANE. Q. Now, the next document applying to 1918 is the certificate of overpayment?

A. That is right.

Mr. ZANE. We offer this document, signed by the deputy commissioner, called a certificate of overassessment, and as to have it marked "Plaintiff's Exhibit P."

(Said document so offered was admitted in evidence, marked "Plaintiff's Exhibit P.")

Mr. ZANE. Q. Now, have you produced the check that paid for that offered document, that $85,502?

A. Yes; the check which I have just handed you is the check paid for the year 1918, 1918 taxes, plus interest from date.

Q. Yes. The amount is $80,136.75 plus interest, making a total of $85,502.71?

A. I believe that is correct.

Mr. ZANE. We offer this check in evidence and ask to have it marked "Plaintiff's Exhibit Q."

(Said document so offered was admitted in evidence, marked "Plaintiff's Exhibit Q.")

Q. I show you photostatic copies and ask you if those are photostatic copies of the claim filed by you for refund of Mrs. Spalding's tax?

A. They are—1917 and 1918.

Mr. ZANE. We will ask to have the one for the year 1917 marked "Plaintiff's Exhibit R" and we offer it in evidence, and the claim for refund, "Plaintiff's Exhibit S," for the year 1918, we offer in evidence.

(Said documents so offered were admitted in evidence, marked "Plaintiff's Exhibits R and S," respectively.)

Mr. ZANE. Q. Now, have you the letter in regard to your objection?

We offer the letter of May 12, 1926, being the rejection of the
43 claim for refund for the year 1917 in evidence as plaintiff's "Exhibit T and the letter of May 12, 1926, rejection of the claim for refund of the year 1918 in evidence as plaintiff's Exhibit U.

(Said documents so offered and admitted in evidence, were marked "Plaintiff's Exhibits T and U," respectively.)

WITNESS. I have figured out for the year 1917 the amount of the tax that would be payable by Mrs. Spalding on our theory of the way to take the depletion. I have taken into account the figures as reported and as fixed by the Government in its various reports and as to which we have had no dispute. Then I have taken depletion on the method which we have claimed and have figured, or attempted to figure, the tax, taking that as the proper figure. I believe that that makes only one other figure to be changed, which is a matter of donations. The reason for that is that under the law Mrs. Spalding is entitled to fifteen per cent maximum of her income, a credit of fifteen per cent of her total income for her donations, and that makes a difference in her return, because if she is entitled to a greater depletion she is entitled to less credit for donations than the Government would allow her. I figured that in that way. The law allowed only fifteen per cent of your income as donations. If you made more donations than fifteen per cent you could not get them deducted. On the Government plan of figuring, her fifteen per cent of her income was less than her donations. She is entitled, under the Government plan, to more donations than she is under our plan. That is the difference in that figure. Otherwise, the computations take the same figures that the Government has taken, except as to depletion.

In figuring how much would be interest on the deferred payments from March 1, 1913, and how much would remain as capital, I took each payment on the date when it was paid, say a payment on January 10, 1917, and I had that discounted back to March 1, 1913, in order to figure just what sum of money discounted at five per cent over the intervening period from March 1, 1913, up to date of payment would produce. That is simple interest. I took the payment and by calculation divided it into two parts, one part of it being the amount of money which put at simple interest on March 1, 1913, with that simple interest added to that amount of money would amount to the payment made in 1917 or 1918. I did that on each quarterly payment. I made the same kind of a calculation for the year 1918.

All the corrections and everything are taken into account of
44 there and the depletion figure was taken on the same plan as I have stated.

Mr. ZANE. Now, these are matters of calculation, your honor, and we offer them simply as calculations, subject to their calculating the same thing. It is the same thing. We can not differ.

Now, we offer these calculations in evidence, the one for 1917 as plaintiff's Exhibit V, and the one for 1918 as plaintiff's Exhibit W.

Mr. LEWIS. I object to them. I understand they were admitted, subject to check.

Mr. ZANE. Yes.

Mr. LEWIS. I object to them on the ground that the method therein used to calculate depletion allowance is incorrect.

The COURT. That is the whole case. Overruled.

Mr. ZANE. That is the whole case.

Mr. LEWIS. Exception.

(Said documents so offered and admitted in evidence were marked as "Plaintiff's Exhibits V and W," respectively.)

The COURT. There is one question here I want to ask you. Count 1 being the tax of 1917, is it not? Count 1 is 1917?

Mr. ZANE. Yes, sir.

The COURT. On page 5, near the bottom of the page, depletion in 1917. The second count deals with the taxes for 1918, does it not? Now, turn to page 17, top of the page.

Mr. ZANE. Well, that is what we allege to show their method.

The COURT. No; depletion in 1917. In other words, you have got there the computation of the depletion for 1917 in the 1918 count. I am calling your attention to it because I was checking through.

The WITNESS. It should be amended, your honor, to show that.

The COURT. It was a mistake.

The WITNESS. Yes; it was simply to show the method, and that 1917 was put in through error.

The COURT. $20,094.22 is erroneous in the second count.

The WITNESS. Yes.

The COURT. It should be amended.

Mr. ZANE. Yes.

The COURT. On the face.

Mr. LEWIS. I have no objection to the amendment except——

The COURT. That is to say, they put their computation for depletion for 1917 in the 1918 column.

Mr. ZANE. That is it, exactly.

45 The COURT. It has no place there.

Mr. ZANE. No; we ought to have put in the figures for 1918.

Mr. LEWIS. I have no objection.

Mr. ZANE. We will amend it right on the face.

The COURT. Leave given to amend second count on its face by striking out the amount $19,194.92 for 1917 and substituting therefor—now, give the——

Mr. LEWIS. Strike out the tonnage, too.

The COURT. No; I think we will simply say, leave to amend second count on its face. There will be no question about it.

Mr. GREEN. If the court please, while we are on this amending process here, on page 2 of the declaration——

The COURT. Another thing, Mr. Green has called attention to, page 2 of the declaration they have included tract No. 7.

Mr. GREEN. I just spoke to Mr. Gardner about it. Tract No. 7 is not involved in this suit other than just expressed in the declaration.

Mr. ZANE. It was under lease.

The COURT. But they offered no proof. I think it does no harm. It is in the declaration, but they have no evidence about it.

Mr. GREEN. The only thing is, it might confuse. I would like to have it stricken out.

Mr. ZANE. We do not care anything about tract 7.

The COURT. It simply means amend the declaration on its face. Now, you agree?

Mr. ZANE. Yes.

Mr. GREEN. Well, the change will simply be——

The COURT. Strike out tract 7.

Mr. GREEN. Strike No. 7.

The COURT. And substitute that figure that I have indicated.

WILLIAM A. JENKINS, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. ZANE:

Reside at 7243 Bennett Avenue, Chicago, Illinois. My vocation is that of consulting actuary.

Q. Have you made any calculations upon certain sums of money?

46 A. Yes, sir.

Q. Wait; just let me get through. Paid quarterly in the years 1917 and 1918, to ascertain, if those are deferred payments from March 1, 1913, how much of the payment made at the date of the quarter you have would be a principal sum, which put out at interest at five per cent for the period of deferment, would with the interest amount to the amount of the payment?

A. Yes, sir.

Q. And have you the paper there showing your calculations?

A. Yes, sir; I have.

Q. Those initials that are marked on there, are those your initials?

A. They are my initials.

Q. That is the way you identify the paper?

A. Yes, sir.

Mr. ZANE. Please mark this paper for identification at present "Plaintiff's Exhibit X," for identification.

Q. Now, are you able to say that those calculations are correct?

A. They are correct.

Q. I wish you would take that paper and state what the calcula tion is and what it shows.

Mr. LEWIS. We object on the ground it is immaterial in this cas what the discount is.

The COURT. Overruled.

Mr. LEWIS. Save our exception on that.

(To which ruling of the court the defendant, by her counsel, the and there duly excepted.)

The WITNESS. Shall I answer it?

Mr. ZANE. Yes; answer now.

A. The paper gives eight calculations. Each one gives an amoun which placed at interest, simple interest at the rate of five per cent produces an accumulated amount on a certain date in 1917 or '18 Those dates are specified and the amount are specified opposite th date.

Q. That is all specified in the paper?

A. Yes, sir; it is all there.

Q. Now, drawing your attention to a particular statement, you first calculation is stated to be here present value March 1, 1913— that is to say, the sum which placed at interest on that date at th rate of five per cent per annum simple interest will produce a
47 accumlated sum on the later date specified. Now, the amoun you have is $69,351.05. That is the calculated amount.

A. The calculated amount.

Q. And the simple interest which you take is for three year and 315 days. What time is that?

A. That is the time between March 1, 1913, and date specified just below that, I don't recall.

Q. January 19, 1917.

Mr. LEWIS. This is all going in subject to objection.

A. Between March 1, 1913, and January 19, 1917.

Mr. ZANE. Q. That is the period elapsed, so that the sum is fo the three years $10,387.65 and $2,988.23 for the 315 days. Now, yo add that interest together and the principal sum at the top, and w have the accumulated sum paid, royalty paid of January 19, 191 $82,626.93.

A. That is correct.

Q. It is just the same for every other payment?

A. Yes; it is.

Q. And you got the amounts of the payment and the dates o payment, they were supplied to you as the basis of the calculation

A. They were supplied to me for the basis of the calculation.

Mr. ZANE. I am going to offer that in evidence.

Mr. LEWIS. We object to it.

Mr. ZANE. We offer Plaintiff's Exhibit X in evidence.

Mr. LEWIS. Of course, I understand that all of the examinatio of this witness with reference to that paper was admitted subjec to objection.

The COURT. Yes.

(Said document, so offered and received in evidence, was marked "Plaintiff's Exhibit X.")

(To which ruling of the court the defendant, by her counsel, then and there duly excepted.)

Mr. ZANE. Cross-examine.

Mr. LEWIS. I move to strike out the testimony given by this witness on the ground that it is immaterial.

The COURT. Overruled.

Mr. LEWIS. Note our exception.

(To which ruling of the court the defendant, by her counsel, then and there duly excepted.)

Mr. ZANE. Any questions?

Mr. LEWIS. No; I haven't anything.

Mr. ZANE. That is all, Mr. Jenkins.

48 Mr. LEWIS. Just one moment. You said the interest rate was five per cent, simple interest, didn't you?

A. Yes, sir.

Mr. ZANE. That is what it says on the paper.

Mr. LEWIS. That is all.

(The plaintiff here rested.)

And thereupon the defendant, to maintain the issues upon her part, introduced the following evidence, to wit:

WILLIAM H. CRAGO, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. LEWIS:

Am forty-eight years of age and my occupation is that of consulting mining engineer and geologist. Live at Duluth, Minnesota. I was three years assistant mining engineer and chemist for the Oliver Iron Mining Company, a subsidiary of the Steel Corporation, at Norway, Michigan. Was three years mining engineer for the same company at Iron River, Michigan. For ten years I was engineer in charge of explorations for the same company with headquarters at Duluth, Minnesota. For about four years I was director of explorations for the Union Miniere du Haut Katenga in the Belgian Congo, Africa. For one year I was consulting mining engineer for the Japanese Imperial Government at iron mines at Anshan, Manchuria; coal mines at Fushun, Manuchuria; six years, bringing my experience up to the present date, I have been general consulting mining engineer in various mines in the United States and Canada.

Mr. LEWIS. Q. In the mining industry, what method is customarily used in providing for depletion, depletion reserves, capital expenditures, such as stripping charges, for amortization of bond issues?

Mr. ZANE. If your honor please, we object to that as wholly irrelevant and immaterial. He says for the amortization of bond issues. That hasn't got anything to do with this.

The COURT. No; that has nothing to do with this.

Mr. LEWIS. This is a return of the capital account, your honor.

The COURT. What is the purpose of this?

49 Mr. LEWIS. It doesn't make any difference whether it is amortization of bond issues or return of invested capital, that is it.

The COURT. Answer the question.

A. Capital is returned at the same rate——

Mr. ZANE. Now, speak louder, won't you?

A. I say the capital is returned at the same rate as the material is taken out of the ground and in step with that extraction.

Mr. ZANE. Please let me have that read.

(Answer read.)

Mr. ZANE. Why, of course, they couldn't pay off anything unless they took something out of the ground; is that what he means?

The COURT. I understand so.

Mr. ZANE. I move to strike out his answer as having nothing to do with this case.

The COURT. Overruled.

Mr. LEWIS. Q. Can a reasonable allowance for the depletion of mining property be determined by discounting the amount received from that, from the operation of that property in a given year at five per cent simple interest back to the basic date—that is, the date on which the capital investment was made?

Mr. ZANE. Now, just read that part. Did he say depreciation or depletion?

(Question read.)

Mr. ZANE. Now, we object to that, because it involves the whole law question here. It involves a conclusion of reasonable allowance.

The COURT. That objection is sustained.

Mr. LEWIS. Note an exception.

(To which ruling of the court the defendant, by her counsel, then and there duly excepted.)

Q. In your opinion, Mr. Crago, can a reasonable allowance for the depletion of a mining property be determined by discounting the amount received from the operation of that property in any year?

Mr. ZANE. We object to that as incompetent, irrelevant, and immaterial and stating a conclusion.

The COURT. Did you finish your question?

Mr. LEWIS. I had not.

Mr. ZANE. Oh, I beg your pardon.

The COURT. Start over again and put your question.

50 Mr. LEWIS. Q. In your opinion, Mr. Crago, can a reasonable allowance for the depletion of a mining property be determined by discounting the receipts from the operation of that property in any year at five per cent simple interest from the date of receipt back to the basic date—that is, to the date the investment was made?

Mr. ZANE. We object. He is asking his opinion upon a matter that is not a matter for opinion evidence, because it is a legal question.

The COURT. Objection sustained.

Mr. LEWIS. Note our exception.

(To which ruling of the court the defendant, by her counsel, then and there duly excepted.)

Mr. LEWIS. That is all. Wait a second.

Q. Mr. Crago, what is the customary method in the mining industry of determining depletion alone?

Mr. ZANE. We object to that as irrelevant and immaterial. We have got a question here——

The COURT. Supposing the tax involved in this case was already determined in accordance with the rules and regulations made by the Commissioner of Internal Revenue, I can not see how the opinion of this witness as to what is a reasonable allowance for depletion can be competent.

Mr. LEWIS. The only bearing it would have——

The COURT. We have the regulation made by the Commissioner of Internal Revenue, and that has provided a method for determining what is a reasonable allowance for depletion. Certainly that depletion could not be determined by the United States in any other way than the one provided by the Commissioner of Internal Revenue, even though in the end it might be held that that commissioner was arbitrary or unreasonable, but certainly you can not get from this witness what is the reasonable—and the further objection to the questions is that they are general in their form, the witness is not asked to have in contemplation the fact that depletion is for the purpose of the application of the statute in this case, but he is asked the question, on the contrary, as a question of bookkeeping with reference to amounts, and in my opinion it is clearly incompetent.

Mr. LEWIS. Note our exception.

(To which ruling of the court the defendant, by her counsel then and there duly excepted.)

Mr. LEWIS. I would like to offer to prove by this witness
51 that the custom in the mining industry in regard to setting up depletion reserve and providing for depletion, both in respect to lessor's interest in mines and operating owners and lessees in mines, is to set aside each year a proportionate part of the March 1, 1913, value of the interest, which proportion is properly—which is the same proportion as is the proportion of the physical body extracted to the total estimated content in mineral body.

The COURT. Let me ask you a question.

Mr. LEWIS. Yes, sir.

The COURT. Do I understand you? You are relying on section 210 of Regulation 45, which provides that the value of the property [reading section].

Now, then, how would a custom by which a fixed amount shall be set aside each year for depletion have any place in a case where the Commissioner of Internal Revenue has provided, as I understand the regulation, that the depletion is to be determined with reference to the units sold within the taxable year.

Mr. LEWIS. The method in this case is exactly in accordance with the regulation; this taxpayer is contending——

The COURT. Then why is it necessary to have expert testimony? You are really asking this witness here to prove some kind of a custom which Congress has not settled. It says it shall be done in accordance not with the custom, but it is already done in accordance with the regulations of the Commissioner of Internal Revenue, and you are standing on that regulation?

Mr. LEWIS. The taxpayer is contending in this case that the method provided in the regulation is not a reasonable method. That is his contention.

The COURT. I don't know whether he is or not. I think his contention is that you have not properly interpreted and applied the regulation.

Mr. LEWIS. As a matter of fact, he is not. He is contending that the regulation provides an erroneous method, because it is not a reasonable method for determining depletion. I submit that the custom on the industry tends to show the reasonableness or unreasonableness of a proposed method.

The COURT. Well, I think I will do this. I think while we have this witness on the stand I will take his answer and let Mr. Zane move to strike it out, or I will reserve the ruling on that until the finish of the case. You may reframe your question and let
52 him go ahead and testify all about this custom so we can get it in the record in his own language; then I will let it stand on a motion to strike until the evidence is completed. That applies to these other questions to which I sustained the objection. You may cover that ground and let him tell what the custom is, without——

Mr. LEWIS. Well, I will just ask him that question.

The COURT. What is the custom? Your question, I understand, is this, Mr. Lewis. You wish the witness to tell the custom, the general custom in the mining business with reference to determining allowances for depletion.

Mr. LEWIS. That is correct, both in regard to lessees and lessors.

The COURT. Yes.

A. We take the value of the mine as of the basic date.

Mr. ZANE. I don't hear you, please.

A. I can't talk any louder, Mr. Zane.

The COURT. And in this case would be March 1, 1913.

Mr. LEWIS. That is correct.

A. And the tonnage of ore in the mine as of that date, we divide the value by the tonnage to get a factor to be used for depletion; then in any one year the number of tons extracted in that year times the factor gives us the amount of the depletion for that year.

The COURT. Now, in applying that, there are two things you have to determine; you have to arrive at a figure which represents the value of the mine?

A. Yes, sir.

Q. And you have to arrive at a figure which represents the tonnage of the mine?

A. Yes, sir.

Q. And your answer is based upon the assumption that the figure has been arrived at as to the value of the mine?

A. Yes, sir.

Q. And also that a figure has been arrived at as to the tonnage?

A. Yes, sir.

Q. And you do not intend to include in your answer anything with reference to the method to be used to determine the value of the mine?

A. Not in the answer to this question.

Q. Nor to the method which is to be used in arriving at the tonnage of the mine?

A. Not in the answer to this question.

53 Mr. LEWIS. Q. But you do say that without the value of the owner's interests, as of the basic dates, which in this case is March 1, 1913, and without an estimate of the ore reserve, a proper allowance for depletion cannot be determined in accordance with the custom, the general custom of the mining industry?

A. Yes, sir.

Mr. LEWIS. That is all.

The COURT. And let the record show now—Do you want your motion in to strike that?

Mr. ZANE. Yes, sir; we make the motion.

The COURT. Motion to strike is entered and ruling reserved. Call my attention to it when you are preparing to argue the case.

Cross-examination by Mr. ZANE:

Q. Now, under that rule, if there were two mines side by side taking out iron ore of the same quality at the same time, the unit of depletion or figure per ton for depletion in one mine might differ very much from the figure or unit of depletion in the other mine by its side?

A. Certainly.

Mr. ZANE. That is all.

Redirect examination by Mr. LEWIS:

Q. Well, just a minute. I will ask you just why that is so. I don't think that is proper cross-examination, and want to correct it by permitting him to explain what he means.

The COURT. Just exactly what he said.

Mr. ZANE. That is a fact, and——

The COURT. You desire him to explain it?

Mr. LEWIS. Yes; I would like to have him state just why that is.

A. It seems to me obvious that if we have two mines right alongside of each other, one of them has got a hundred thousand tons in, and one has a million tons in, the amount of the depletion

would necessarily be different, irrespective of the amount that was mined in any one particular year.

Mr. ZANE. That is not the question asked.

Mr. LEWIS. All right, you go ahead and ask him some more then.

54. Mr. ZANE. Yes; that is not the question. The question asked you was whether if you had two mines side by side, and you were figuring on a unit of depletion for each mine, and each of those mines took out the same quantity of ore in a year, and the ore was of the same quality and the same value on the market, nevertheless the amount of depletion in the one mine would differ from the amount of depletion in the other mine.

A. Certainly it would.

The COURT. It might or might not; is not that the correct answer? It might not if the quantity in the mine had been estimated correctly and the difference in the value of the mine had been made to correspond with the difference in quantity, then it would be the same, wouldn't it?

A. It seems to me that the very nature of depletion provides for depleting a certain particular sum of money or ore, whichever you want to call it, that has to be depleted over a certain number of years. Well, if you have a mine in which there are 100,000 tons, we will say, and another mine in which there is a million tons, and then in one year you take out from each mine 100,000 tons, from the first mine you have completely depleted the mine, necessarily you write off all the depletion; on the second mine you have only depleted one-tenth of the reserves; therefore you write off one-tenth of the depletion.

The COURT. Supposing the second mine is worth ten times as much as the first.

A. In that case you write off the full depletion.

Q. And it is the same as one-tenth of the other?

A. Yes, sir.

Mr. ZANE. But the unit of depletion, would that be the same?

A. No.

Mr. LEWIS. Don't you see, your honor, the unit can not be the same unless the factors and the estimates are precisely the same? He can't get the unit of depletion the same; that is the trouble.

Mr. ZANE. Now, let me ask you this: The depletion consists in money or in tons of ore taken out, doesn't it, that is what depletes the mine?

Answer. If you start with tons of ore, then you certainly deplete tons of ore.

Q. Yes.

A. If you start with money, you deplete money.

Q. And have you money or mine there?

55 A. If you start with horses, you deplete horses.

Q. You are mining ore?

A. For which you are getting money.
Q. But you are taking it out.
A. Yes.
Q. And it is the ore taken out that depletes the mine?
A. Yes.
Q. Now, if the two mines are side by side, and the one takes out exactly the same quantity of ore as the other mine, and the ore is of the same quality, and the one mine's depletion in ore is the same as the other mine's depletion in ore, isn't it?
A. It certainly is not.
Mr. ZANE. All right, that is all.
A. It is the same in amount but not the same in rate.
Q. It is the same in ore, isn't it?
A. It is the same in amount, but not the same in rate.
Mr. ZANE. That is all.
A. The same number of tons of ore have been taken out, but not the same proportion of the total ore.
The COURT. Why, certainly not, because in one case he has taken all of it out and the other mine you are taking a tenth of it.
A. Why, certainly, in one year.
Mr. LEWIS. I want to make a motion for a directed verdict for the defendant.
The COURT. Is there a counter motion?
Mr. ZANE. We make the same motion to direct a verdict.
The COURT. And the jury will be excused until ten o'clock next Tuesday morning. I will hear you argue your motions this afternoon. The jury will come back at ten o'clock; at which time I will pass on your motions, and if it is agreeable to you gentlemen I would like to adjourn a few minutes after four. Ten o'clock Tuesday morning.
Mr. LEWIS. If your honor please, I have prepared in writing a motion for this directed verdict which I would like to file.
The COURT. Yes. In which you assign your reasons for it?
Mr. LEWIS. Yes.
The COURT. Give counsel on the other side a copy, and I suppose you will have one also.
Mr. ZANE. Yes, sir. I will file another one in writing.

56 TUESDAY, MAY 8, 1928, 10 O'CLOCK A. M.

Court met pursuant to adjournment.
Present: Mr. Zane; Mr. Green.
The COURT. Bring in the jury in the Spalding case.
Mr. ZANE (handing paper to the court). I might say that amount in there is the agreed amount, your honor. We have both made the calculation so there is no dispute.
(Whereupon the following proceedings took place in the presence and hearing of the jury.)

Instructions to jury

The COURT. In this case, both the plaintiff and defendant have moved for a directed verdict. The effect of such a motion is a submission of the facts to the court for decision. In the case of McHale v. Hull, 14 Fed. Rep., new series, the Court of Appeals for this circuit, passing the technical questions in the case about the form of the bill of exceptions, considered the merits of the case, and held that the finding of the trial court in that case was to be sustained on at least two theories.

It is conceded here at the argument on the trial in this court that the record in the case on trial is for all purposes of this motion, the same record, or, rather, substantially the same record as the record in the case which was decided by the Circuit Court of Appeals for this circuit. Unless, therefore, there is something in the later decisions of the Supreme Court which, when drawn to the attention of the court at the argument, the effect of which is to overrule that decision of the Court of Appeals, it is the duty of this court to follow the decision of the Circuit Court of Appeals for this circuit.

I have examined very carefully this Ludey case in the 274th U. S. While there is some language in that case which might be interpreted to be out of harmony with what the Circuit Court of Appeals in this circuit has said in the McHale case, it is my opinion that there is nothing in the Ludey case which might justify this court in disregarding the plain decision of the Circuit Court of Appeals for this circuit in the McHale case.

I think that the only course which properly can be pursued or may be pursued by the court is to give the directed verdict for the plaintiff in this case.

The jury, therefore, are instructed to find for the plaintiff
57 and to assess the plaintiff's damages at the sum of $118,043.21.

You may retire to your room, gentlemen, and sign the verdict.

Mr. GREEN. If the court please, will you note our exception to that finding.

The COURT. Yes; certainly.

(To which ruling of the court the defendant, by her counsel, then and there duly excepted.)

Mr. ZANE. If your honor please, I think there is one matter that I ought to call to the court's attention. Your honor said when we made our motion to strike out the evidence for the defendant, you said to call the motion to your attention later, but I don't think in the presence of this instruction it makes any difference.

The COURT. The case having been submitted——

Mr. ZANE. There is nothing in that.

The COURT. Practically by a motion for a directed verdict on both sides, it seems to me that these rulings on the admissibility of evidence become unimportant.

Mr. ZANE. Well, I think so, your honor, but I just wanted to bring it up, so as to——

The COURT. Yes.

(Whereupon the jury retired and brought in their verdict as instructed.)

The COURT. You may enter the verdict, Mr. Clerk. The record will show—Is Mr. Green here? The record may show a motion for new trial entered and overruled and exception, judgment on the verdict and exception, and sixty days for a bill of exceptions, I suppose.

Mr. HESS. I don't see either Mr. Green or Mr. Lewis here. I am quite sure they will want to appeal.

The COURT. I will allow sixty days for bill of exceptions.

Mr. HESS. You don't need any order allowing an appeal under the new statute.

The COURT. Appeal is taken by merely filing notice with the clerk, under this new statute.

Mr. HESS. Probably there should be a motion, if the court please, in arrest of judgment and overruled, and motion for new trial made and overruled.

The COURT. Yes.

Mr. HESS. And sixty days for a bill of exceptions.

The COURT. Yes, that will make the record complete.

Which were all the proceedings had and evidence taken on the trial of the above entitled cause.

Order settling bill of exceptions

Be it further remembered and certified that the above and
8 foregoing is a true and correct transcript of all of the evidence heard in this case both on behalf of the plaintiff and the defendant; that the exhibits attached hereto and made a part thereof by reference constitute a true and correct transcript of all of the exhibits introduced in evidence necessary to present clearly the questions of law involved in the rulings to which exceptions were reserved, and it is a true and correct transcript of all of the exceptions and objections made both by the plaintiff and the defendant to the introduction of evidence, and a true and correct transcript of the rulings of the court. And, inasmuch as the matters above set forth do not fully appear of record in this suit, the defendant tenders this bill of exceptions and prays that the same may be certified under the hand and seal of the judge of this

court and, accordingly, made a part of the record of such cause, and it is accordingly done this 13th day of July, A. D. 1928.

JAMES H. WILKERSON,
Judge of the District Court of the United States,
Northern District of Illinois, Eastern Division.

Presented to us this 22d day of June, 1928.

ZANE, MORSE & NORMAN,
GARDNER AND CARTON,
Attorneys for Plaintiff.

Presented to me in open court this 13th day of July, A. D. 1928.

We approve the above and foregoing bill of exceptions.

ZANE, MORSE & NORMAN,
JOHN M. ZANE,
GARDNER & CARTON,
HENRY A. GARDNER,
URBAN A. LAVERY,
ALFRED T. CARTON,
Attorneys for Plaintiff,
Eudora Hull Spalding.

FOLD OUT IS TOO LARGE TO BE FILMED

(SEE INSTRUCTIONS ON PAGE 3 UNDER CORRESPONDING HEADINGS)

DETAILS OF TAXABLE INCOME

WRITE "NONE" IN EACH BLOCK IN WHICH YOU HAVE NO I

A. INCOME FROM SALARIES, WAGES, COMMISSIONS, BONUSES, DIRECTORS' FEES, AND PENSIONS, A

1. By whom received	2. Occupation or profession	3. Name and address of employer or (if practicing a profession) office address	
None			

Net Income from Salaries, etc. (total column 4 minus total column 5) ____

Explanation of deductions: ____

B. INCOME FROM BUSINESS (INCLUDING FARMING)

Kind of business None — Business address ____

Gross Sales and income from business services ____

Cost or Goods Sold:

Labor			
Materials and supplies			
Merchandise bought for sale			
Other costs			
Plus inventories at beginning of year			
Total			
Less inventories at end of year			
Net Cost of Goods Sold			

Other Business Deductions:

- Salaries and wages not reported as "Cost of Goods Sold" ____
- Rent ____
- Interest on business indebtedness ____
- Taxes on business and business property ____
- Repairs, wear and tear, and property lo... (To be explained in table at bottom of page.) ____
- Bad debts arising from sales (see instruc... ____
- Other expenses (specify) ____
- Total Other Business Deductions ____

Net Cost of Goods Sold Plus Total Other Business Deductions ____

Net Income from Business (including Farming) ____

Explanations: ____

C. PROFITS FROM SALE OF REAL ESTATE, STOCKS, BONDS, AND OTHER PROPERTY.

1. Kind of property.	2. Year acquired.	3. Name and address of purchaser or broker.	4. Sale price.
None			

Net Profit from Sales (total of columns 4 and 7 minus total of columns 5 and 6) ____

Explanations: ____

D. INCOME FROM RENTS AND ROYALTIES.

1. Kind of property.	2. Name and address of tenant or lessee.	3. Amount of rent and royalties.	4. Expenses (repair, wear and tear, real property taxes)
Iron mines		260 072 30	260 072
Totals			

Net Income from Rents and Royalties (total of column 3 minus total of columns 4, 5, 6, and 7) ____

Explanations: ____

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1917

Page 4

DETAILS OF TAXABLE INCOME (Concluded)

(SEE INSTRUCTIONS ON PAGE 8 UNDER CORRESPONDING HEADINGS)

TOTAL NET INCOME from Sources A, B, C, D, E, and F, reported on page 3							15	572	64
G. INTEREST ON TAX-FREE-COVENANT BONDS (on which one normal tax of 2 per cent was withheld at source).	1. Gross income.			2. Deductions, if any.					
	6	731	34						
NET INTEREST ON TAX-FREE-COVENANT BONDS (total column 1 minus total column 2)							6	731	34
H. OTHER INCOME (including income from partnerships and fiduciaries, except that reported under E, F, and G).	1. Gross income.			2. Deductions, if any.					
Interest on bonds and other obligations of domestic and resident corporations (except as entered under G)	5	291	37				5	291	37
Interest on bonds of foreign countries and corporations and dividends on stock of foreign corporations									
Interest on notes, bank deposits, mortgages (except of corporations), and all other interest	9	117	98				9	117	98
I. TOTAL NET INCOME FROM ALL SOURCES							36	572	32
J. GENERAL DEDUCTIONS NOT REPORTED ON PAGE 3 OR ABOVE (EXCEPT CONTRIBUTIONS—SEE N BELOW).									
Interest on personal indebtedness									
Taxes on dwelling and personal property, and other taxes not reported above (see instructions on page 8)						1	417	78	
Other deductions, except contributions (explain) Expense of maintaining residence, Salaries, Legal expenses						5	016	81	
TOTAL GENERAL DEDUCTIONS, EXCEPT CONTRIBUTIONS							6	434	59
K. TOTAL NET INCOME (WITHOUT DEDUCTING EXCESS PROFITS TAXES OR CONTRIBUTIONS)							30	138	73
L. LESS EXCESS PROFITS TAXES, IF ANY, FOR 1917 (see instructions on page 1 under "Excess profits taxes")									
M. TOTAL NET INCOME (WITHOUT DEDUCTING CONTRIBUTIONS) (K minus L)									
N. CONTRIBUTIONS TO CHARITABLE ORGANIZATIONS, ETC. (Enter below name and address of each organization and amount paid to each.)									
Chicago Art Institute, Exposition &c	6	000							
Visiting Nurse Assn, Chicago, Illinois	1	200							
Red Cross Fund for Europe Wounded	15	000							
TOTAL (not over 15 per cent of item M)							1	523	01
O. TOTAL NET INCOME ON WHICH INCOME TAX IS TO BE COMPUTED (M minus N)							25	614	72

CAUTION

Read all instructions.

Answer all questions.

If necessary, ask your Collector of Internal Revenue for assistance.

Form 1040 (Revised January, 1918)—UNITED STATES INTERNAL REVENUE.

INDIVIDUAL INCOME TAX RETURN FOR CALENDAR YEAR 1917

(Write plainly. Give name in full.)

Name by (or for) Eudora Hull Spalding

Home address 2626 Prairie Avenue, Chicago, Illinois

(Street and number or rural route.) (Post office and State.)

(IF NAME AND ADDRESS ARE FILLED IN AND EITHER IS INCORRECT, PLEASE CORRECT IT.)

FEB 2 1918

RECEIVED

Assessed by

Entered on list

Page Line

07264 0 3 4 3

1. Did you make a return for 1916? Yes 2. If so, at what address did you give on the return? 2626 Prairie Avenue, Chicago Illinois 3. To what Collector's office was it sent? 1st Illinois (Give district or city and State.)

4. Were you on December 31, 1917, married and living with wife (or husband)? Yes 5. If not, were you head of a family as defined in instructions on page 1 under "Personal Exemption"? 6. How many dependent children under 18 (or mentally or physically incapacitated for self-support) had you on December 31, 1917?

7. If head of a family without dependent children, what was the relationship of those dependent upon you? 8. Did your wife (or husband) or dependent children derive income from sources independent of yours? Yes 9. If so, in what amount, for each person?

10. If not, was such income from a separate estate? 11. If a separate return has been made by (or for) wife (or husband) or dependent child, give full name and address entered at head of that return. Nelle Spalding 2626 Prairie Avenue Chicago Illinois

12. If income of $800 or more received by wife (or husband) or dependent child is included in this return, give full name of each such person, and also address if different from that given at the head of this return.

13. What addresses other than those already entered on this return did you give to employers or other persons, firms or corporations who paid you $800 or more income during 1917?

14. Is this return made from books kept on other than a cash basis? 15. If so, were such books audited by a public accountant? 16. By whom?

17. To the best of your knowledge and belief, is the statement on this account-ant's report?

18. Total net income on which tax is computed (item O)	25	614	72	28. Normal tax at 2 per cent on amount of item 25		492	29
19. Less: Excess of dividends received from obligations of United States issued since Sept. 2, 1917 (item 2, total of column 7)	5	572	64	29. Additional normal tax of 1 per cent on amount of item 27		492	29
				30. Total normal tax		984	58

DETAILS OF TAX-FREE INCOME (Continued)

Total Net Income from Schedule B, Col. B, Line 3 (Carried on Page 2)

6. INTEREST ON TAX-FREE-COVENANT BONDS (Including that portion of 4% per cent which was withheld at source)

Net Interest on Tax-Free-Covenant Bonds (Enter total on Line 7, Page 2)

7. OTHER INCOME (Including income from partnerships) and from estates and trusts (Attach a separate sheet if required under C)

Interest on bonds and other obligations of domestic and municipal corporations (except as entered under 6)

Interest on bonds of foreign countries and corporations and dividends on stock of foreign corporations

Interest on notes, bank deposits, mortgages (except of corporations) and all other sources

1. TOTAL NET INCOME FROM ALL SOURCES

2. GENERAL DEDUCTIONS NOT ENTERED ON PAGE 3 OR ABOVE (EXCEPT CONTRIBUTIONS—SEE

Interest on personal indebtedness

Taxes on dwelling and personal property, and other taxes not reported above (Enter total on Line 8, Page 3)

Other deductions, except contributions (explain fully) [illegible]

Total General Deductions, Except Contributions

3. TOTAL NET INCOME (WITHOUT DEDUCTING CONTRIBUTIONS) (3 minus 2)

4. LESS EXCESS PROFITS TAXES, IF ANY, FOR 1917 (see instructions on page 1 under "Excess profits taxes")

5. TOTAL NET INCOME (WITHOUT DEDUCTING CONTRIBUTIONS) (3 minus 4)

6. CONTRIBUTIONS TO CHARITABLE ORGANIZATIONS, ETC. (Enter below name and address of each organ

[illegible] $ [illegible]

[illegible] [illegible]

[illegible] [illegible]

Total (not over 15 per cent of 5)

7. TOTAL NET INCOME ON WHICH INCOME TAX IS TO BE COMPUTED (6 minus 7)

CAUTION

INDIVIDUAL INCOME-TAX RETURN FOR CALEN

Make by (or for)

Number of Return [illegible]

Page 4

63 1917

Page 1.

[Form 1040 F, United States Internal Revenue Service]

SCHEDULE OF FARM INCOME
AND EXPENSES FOR THE
YEAR 1917

Rancho Lespe (Eudora Hull Spalding, owner)

(Name)

Lespe, California

(Post office and State)

Attach this form to your income tax return Form 1040A or 1040 and file it with the collector of internal revenue.

If your accounts are kept on a cash receipt and disbursement basis, fill in pages 1 and 3 only. If you keep books of income and expenses on an accrual basis, fill in pages 2 and 3 instead.

FARM INCOME FOR TAXABLE PERIOD

1. Sale of live stock raised on and products from your farm

Kind of animals	Quantity	Amount
Cows		$
Calves		
Bulls		
Steers		
Horses		
Mules		
Colts		
Sheep		
Lambs		
Hogs		
Pigs		
Chickens		
Turkeys		
Ducks		
Bees		
Milk		
Butter		
Cream		
Eggs		
64 Wool		
Hides		
Honey		
Total		$

(Enter on line 1)

2. Sale of crops and products grown on your farm

Kind of crop	Quantity	Amount
Corn		$
Wheat		
Cotton		
Tobacco		
Lemons boxes	19,065	63,644.58
Oranges do	3,378	3,994.25
Beans pounds	788,900	32,565.50
Nursery trees	13,496	10,122.20
Walnuts pounds	28,887	4,825.46
Cottonseed		
Sirup		
Total		$115,151.99

(Enter on line 2)

65 *3. Other receipts*

Items	Amount
Merchandise rec'd for produce	$
Machine work	
Hire of teams	
Breeding fees	
Total	$

(Enter on line 3)

4. Sale of livestock, crops, or other items purchased

Description	Received	Cost	Profit
	$	$	$
Total			$

(Enter on line 4)

Summary of income and expenses computed on a cash receipt and disbursement basis

1. Sale of livestock and stock products raised	$	7. Expenses (column 1, page 3)	$80,720.54
2. Sale of crops and crop products grown	115,151.99	8. Expenses (column 2, page 3)	24,859.20
3. Other receipts		9. Repairs	
4. Sale of stock, or other items purchased		10. Depreciation	11,899.85
5. Gross profits	$115,151.99	11. Total expenses	$117,479.59

6. Net farm loss to be reported in Schedule A, line 21, Form 1040A, or line 22, Form 1040 (item 5 minus item 11) $2,327.60

38 Page 2. *Farm inventory for income computed on an accrual basis*

Description (kind of animals, crops, or other products)	On hand at beginning of year		Purchased during year		Raised during year		Consumed or lost during year		Sold during year		On hand at end of year	
	Quantity	Inventory value	Quantity	Amount paid	Quantity	Inventory value	Quantity	Inventory value	Quantity	Amount received	Quantity	Inventory value
		$		$		$		$		$		$
Totals		$		$		$		$		$		$

(Enter on line 4) (Enter on line 5) (Enter on line 2) (Enter on line 1)

37 *Summary of income and expenses computed on an accrual basis*

1.	Inventory of livestock, crops, and products at end of year	$
2.	Sales of livestock, crops, and products during year	
2a.	Other miscellaneous receipts	
3.	Total	$
4.	Inventory of livestock, crops, and products at beginning of year	$
5.	Cost of livestock, and products purchased during year	
6.	Gross profits (item 3 minus the sum of items 4 and 5)	$
7.	Expenses (column 1, page 3)	$
8.	Expenses (column 2, page 3)	
9.	Repairs	
10.	Depreciation	
	Total expenses	$
11.	Net farm profit to be reported in Schedule A, line 21, Form 1040 A, or line 22, Form 1040 (item 6 minus item 11)	$

Page 3

Farm expenses for taxable period

Items	(1) Amount
Hired help for farm	$58,404.53
Feed, hay, straw, etc	2,353.67
Seed, plants, etc	
Threshing and baling	1,285.50
Cotton ginning	
Silo filling	
Milling and grinding feed	
Fertilizers and spraying materials	6,539.39
Blacksmithing	
Fuel and oil for farm work	6,841.93
Barrels, bags, crates, and twine	
Taxes (except Federal income taxes)	4,969.21
68 Insurance on property other than you dwelling and personal effects	
Interest on farm notes and mortgages	276.31
Water rent	
Rent for farm railroad right of way cultivation lease	50.00
Total	$80,720.54
	(Enter on line 7)

Items	(2) Amount
Misc. supplies for barn	$1,089.93
" " " boarding house	4,875.93
" " " packing house	5,891.41
" " " pumping plant	345.75
" " " tractors	1,584.76
Selling expense assessments of Cal. fruit growers ex	1,871.62
Miscellaneous supplies	9,250.29
Total	$24,859.20
	(Enter on line 8)

Repairs and depreciation

Description (if buildings, state the material of which constructed)	Age when acquired	Date acquired or constructed	Cost, or if acquired prior to March 1, 1913, the fair market value on that date	Repairs	Depreciation
Farm buildings			$50,408.37	$	$2,016.34
Farm machinery and tools			32,147.71		3,796.74
Farm fences, drains, ditches, etc., irrigation system			77,966.26		4,765.15
Furniture & equipment			1,741.00		174.09
Livestock			11,475.31		1,147.83
Totals			$173,738.65		$11,899.85
				(Enter on line 9)	(Enter on line 10)

Remarks:

Page 4

Instructions

Pages 1 and 3 are to be filled in by farmers who either keep no records or only records of cash receipts and disbursements. Pages 2 and 3 are to be filled in by farmers who keep complete accounts on an accrual basis with inventories to determine net profits. Returns on an inventory basis are not acceptable unless the inventories were actually taken and so recorded at the beginning and end of the taxable period.

If you do not, as a matter of settled practice, keep books of account upon an accrual basis, no attempt should be made to fill out the items in the form relating to inventories, and the omission of those items in that case will not result in an incorrect computation of your farm net profit. If, however, you regularly keep books of account upon an accrual basis which clearly reflect your net income, you should report the value of your crops and stock on hand at the end of the year in gross profits, as provided on the form.

This schedule may be used by farmers who work their own farms or rent them out on shares, and if two or more farms are owned, it may be desirable to fill out a separate schedule for each farm.

Attach this schedule to your income-tax return (Form 1040A or Form 1040). You should keep a copy for future reference.

When you have determined the net farm profit, transfer the amount to line 21 in Schedule A of the income-tax return, Form 1040A, or line 22, Form 1040.

Cash receipts and disbursements basis

A farmer reporting on the basis of cash receipts and disbursements shall include in his gross income for the taxable year the amount of cash or the value of merchandise or other property received from the sale of livestock and produce which were raised during the taxable year or prior years, also the profits from the sale of any stock or other items which were purchased. The farm expenses will be the actual amounts paid out during the taxable year.

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Accrual basis

If your farm books of account are kept on an accrual basis, the filing of this form is optional.

For those reporting on the accrual basis, the gross profits are obtained by adding to the inventory value of livestock and products on hand at the end of the year the amount received from the sale of stock and products and other miscellaneous receipts, for hire of teams, machinery, etc., during the year, and deducting from this sum the inventory value of stock and products on hand at the beginning of the year plus the cost of stock and produce purchased during the year. The farm expenses will be the actual expenses incurred during the year, whether paid or not.

Inventory.—If you render a return for the taxable period of 1920 upon an accrual basis, you may value the closing inventory for 1920 according to the farm price method which contemplates valuation of inventories at market less cost of marketing. In the event the use of the farm price method of valuing your closing inventory for 1920 represents a change in method of taking inventories from that employed by you for 1919, the opening inventory for 1920 should be brought in at the same value as the closing inventory for 1919 (this being the same in effect as valuing the opening inventory on the new basis and crediting income with the excess valuation brought in). If such treatment of your opening inventory for 1920 results, however, in abnormally large income for 1920 by reason of the fact that certain stock which was on hand at the beginning is still on hand at the end of the year, then adjustments in the form of an adjustment sheet attached to your 1920 return may be made of your taxes for 1917 and each succeeding year to 1920, based on the new method of taking inventories (using for each of such years prior to 1920 the same method employed for 1920).

Farmers who have kept no records or only records of cash receipts and disbursements and who desire to report on the accrual basis with inventories, must calculate their net income for the current taxable year, without entering as a credit on line 4, page 2, the inventory of livestock, crops, and products at the beginning of the year; except—

(a) If any livestock, grain, or other property on hand at the beginning of the taxable year had been purchased and the cost
71 thereof not charged to expense, only the difference between the cost and the selling price should be reported as income for the year in which sold;

(b) But if the cost of such property has been charged to expense for a previous year, the entire amount received must be reported as income for the year in which sold: Provided, That when actual records or other definite proof satisfactory to the Commissioner of Internal Revenue are available, inventory adjustments may be made in accordance with instructions above.

Income

All the farm income from whatever source must be reported in this schedule. Anything of value received instead of cash must be considered income to the extent of its cash value. Thus the total value of groceries, merchandise, etc., received in exchange for eggs, butter, or other produce must be reported as income.

Hail and fire insurance on growing crops should be included in gross income to the amount received in cash, or equivalent for the crop destroyed.

If you sold your farm or any part of it, report the profit in Schedule D of Form 1040 or 1040.

The value of farm produce which is consumed by the farmer and his family need not be reported as income; but expenses incurred in raising produce thus consumed must not be claimed as deductions.

The term "farm" embraces the farm in the ordinarily accepted sense, and includes stock, dairy, poultry, fruit, and truck farms, also plantations, ranches, and all land used for farming operations. All individuals, partnerships, or corporations that cultivate, operate, or manage farms for gain or profit, either as owners or tenants, are designated farmers. A person cultivating or operating a farm for recreation or pleasure is not regarded as a farmer.

Expenses and other deductions

Labor.—Only that part of the board of hired labor which is purchased should be included as a deduction. The value of products furnished by the farm and used in the board of hired labor is not a deductible expense. Rations purchased and furnished to laborers or share croppers are deductible as a part of the labor expense. Do not deduct the value of your own labor or that of your wife
72 or dependent minor children, unless you report such value as income in Schedule B (Form 1040A or 1040). Do not deduct amounts paid to persons engaged in household work, except to the extent that the services of such employees are used in boarding and otherwise caring for farm laborers. Services of such employees engaged in caring for the farmer's own household are not a deductible expense.

Fertilizers, manures, etc.—The cost of manures, commercial fertilizers, lime, raw rock phosphate, etc., that were bought during the year may be deducted as an expense.

Taxes.—Do not deduct inheritance or estate taxes, Federal income taxes, or taxes for any improvement or betterment tending to increase the value of the property. Be ready to show tax receipts for taxes claimed as a deduction. Do not deduct taxes on your dwelling or household property on this form. They should be claimed in Schedule I, Form 1040A, or Schedule K, Form 1040.

Interest on indebtedness.—All interest paid on farm mortgages, notes, and other obligations incurred to carry on the farm business should be deducted.

Bad debts.—Report only debts, arising from sales that have been reported as income, which have been definitely proved within the year to be worthless. If you report your farm income on a cash basis, bad debts are not an allowable deduction.

Repairs and depreciation.—Depreciation claims should not exceed the actual cost of buildings and equipment (or if acquired prior to March 1, 1913, the fair market value on that date) divided by its probable life in years since acquisition. In computing depreciation do not include the value of farm land nor the land on which farm buildings are located. Do not deduct repairs or depreciation on the

dwelling you occupy or on your personal or household equipment. Do not claim as a separate item depreciation on live stock or any other property included in your inventory, as such depreciation is taken care of in the reduced amount of the inventory at the close of the year. Depreciation, however, may be claimed on draft or work animals and animals held for breeding purposes which were purchased and which are not included in your inventory of stock bought or raised for sale.

Losses.—You may deduct on Form 1040 A or Form 1040 losses of buildings, machinery, and other property not included in your inventory, resulting from fires or other casualties and not compen-
78 sated for by insurance or otherwise. Losses of property included in your inventory are taken care of by the reduced amount of the inventory at the close of the year. The loss of growing crops by frost, storm, flood, or fire or the loss of animals raised, is not deductible.

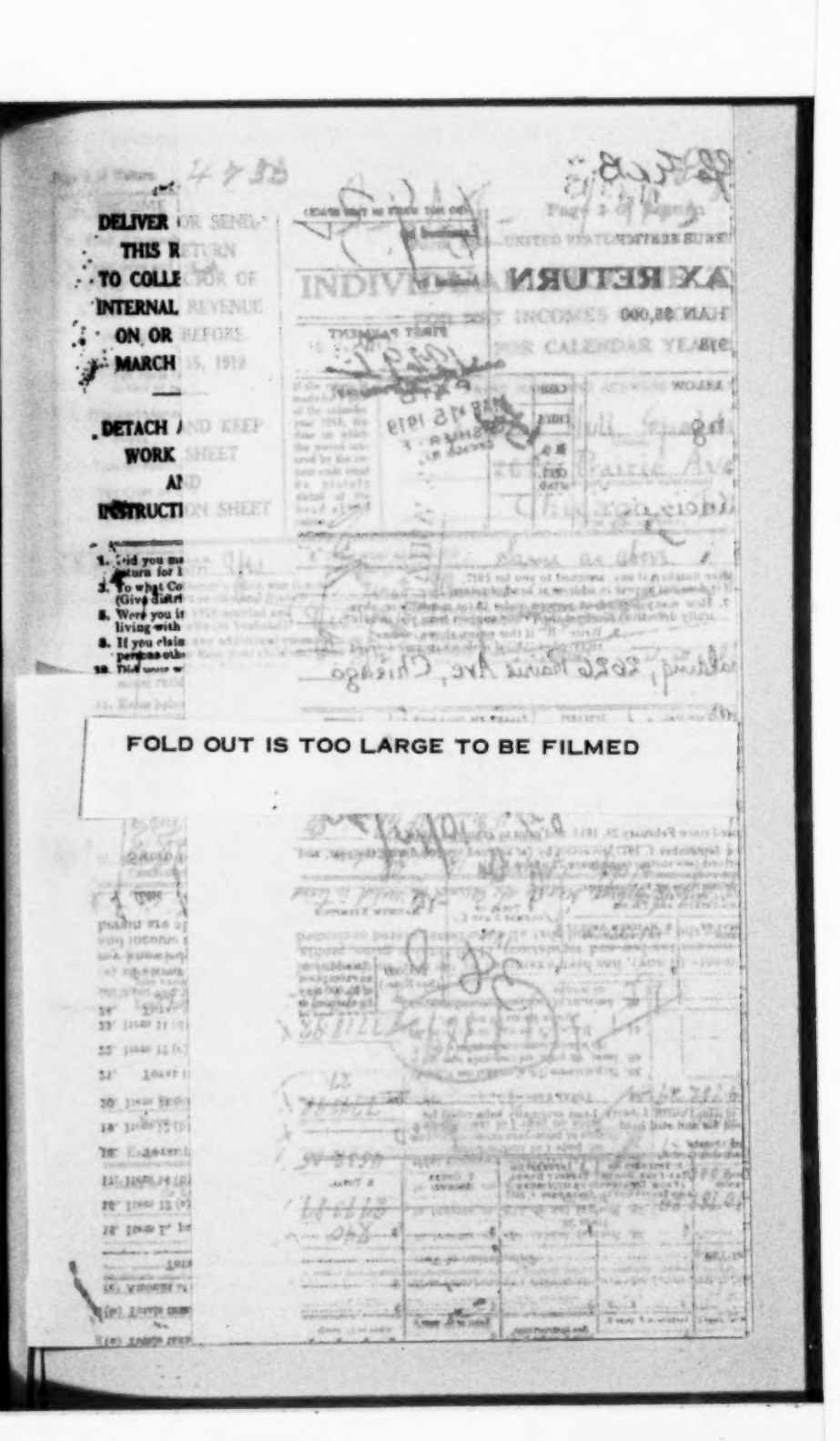
Tools, machinery, and equipment.—The cost of small tools of short life, such as shovels, rakes, etc., may be deducted as an expense. You may deduct expenses of operation, repairs, and depreciation on automobiles used exclusively in farm business. If an automobile is used in farm business for a part of the time only, a corresponding part of the expense may be deducted. Amounts expended for automobiles, farm machinery, farm buildings, or other farm equipment of a permanent nature are not deductible as expenses, as such expenditures are regarded as investment of capital which is returned to the owner through depreciation allowances prorated over the useful life of the property.

Rent paid in crops.—Where a tenant farmer pays his rent to the landlord in form of crops raised on the farm (the agreement being on a crop-share basis), the tenant may not deduct as rent the value of the crop given to the landlord, but he may deduct all amounts paid by him in raising the crop.

79 Explanation of depletion

Referring to "Mines" as shown in Schedule "E." (Explanation of E 4.)

Tax payer has received from lessees of mines during year 1918, $219,940.43, which she has deducted as a depletion of the property consisting of iron mines in St. Louis County, Minnesota, owned by her in fee and leased to Oliver Iron Mining Company and others at a rate of 25c. per ton and valued and reasonably worth March 1, 1913, $7,891,539.38 by the figures of the Minnesota Tax Commission, from which there has been deducted ore at 25c. per ton, yielding to taxpayer since March 1, 1913, $1,084,182.63. b3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EVDORA HULL SPALDING

ersonal or household equipment. epreciation on live stock or any ventory, as such depreciation is nt of the inventory at the close r, may be claimed on draft or r breeding purposes which were ded in your inventory of stock

m 1040 A or Form 1040 losses of perty not included in your inven- other casualties and not compen- herwise. Losses of property in- e taken care of by the reduced of the year. The loss of growing r the loss of animals raised, is not

—The cost of small tools of short be deducted as an expense. You n, repairs, and depreciation on m business. If an automobile is f the time only, a corresponding ed. Amounts expended for auto- dings, or other farm equipment of ible as expenses, as such expendi- f capital which is returned to the nces prorated over the useful life

enant farmer pays his rent to the n the farm (the agreement being may not deduct as rent the value , but he may deduct all amounts

of depletion

in Schedule "E." (Explanation

ssees of mines during year 1918, ed as a depletion of the property uis County, Minnesota, owned by n Mining Company and others at d and reasonably worth March 1, f the Minnesota Tax Commission, cted ore at 25c. per ton, yielding 1,084,182.63. b3

DELIVER OR SEND THIS RETURN TO COLLECTOR OF INTERNAL REVENUE ON OR BEFORE MARCH 15, 1919

DETACH AND KEEP WORK SHEET AND INSTRUCTION SHEET

Form 1040—UNITED STATES INTERNAL REVENUE SERVICE

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES OF MORE THAN $5,000

FOR CALENDAR YEAR 1918

If the return is made for a part of the calendar year 1918, the dates on which the period covered by the return ends must be plainly stated at the head of the return.

PRINT NAME AND ADDRESS PLAINLY BELOW

Evdora Hull Spalding
(Name)
2626 Prairie Ave
(Street and number or Rural Route)
Chicago Illinois
(Post office and State)

FIRST PAYMENT

1. Did you make a return for 1917? Yes
2. If so, what address did you give on that return? Same as above
3. To what Collector's office was it sent? (Give District or city and State.) First Illinois
4. Give number if any, assigned to you for 1917, if it does not appear in address at head of return
5. Were you in 1918 married and living with wife (or husband)? Yes
6. If not, were you head of a family (see instructions, page 2, under "Who are liable")?
7. How many dependent persons under 18 (or mentally or physically defective) received their chief support from you in 1918?
8. If you claim any additional exemption on account of dependent persons other than your children, what was the relationship to you?
9. Write "R" if the return shows income received; write "A" if it shows income accrued
10. Did your wife (or husband) or minor child make a separate return? (If so, give name and address from which entered or sent as head of return.) Keith Spalding, 2626 Prairie Ave, Chicago
11. Enter below all receivable income received by (or accrued to) you during the year:

Classes of Securities	Principal	Interest	Principal	Interest	Salary, etc. (see page 2)	Amount
Bonds of First Liberty Loan converted	$ 190000 00	$ 1550	$ 180000 00	$ 6555 00		$
Other obligations of the U. S. issued before Sept. 1, 1917 (see instructions, page 2)						

12. (a) Amount of stock dividends received by (or accrued to) you wholly during the year (included in your declared [illegible] earnings of domestic or resident corporations accumulated since February 28, 1913, and prior to January 1, 1917 $ 500 00 (b) Accumulated in 1918 $ (c) Accumulated since February 28, 1913 and prior to January 1, 1918 $
13. Value of total interest-bearing Liberty Bonds and other obligations of the United States issued since September 1, 1917, received by (or accrued to) you during the year, and (stating amount of each obligation par value) held at any one time during which such interest was derived (see instructions, page 2, under B) $

	Bonds Individual Holdings: 2. Amount of Interest	3. Maximum Amount of Obligations	Shares of Holdings of Partnerships, Personal Service Corporations, and Estates and Trusts: 4. Amount of Interest	5. Maximum Amount of Obligations	6. Total of Columns 2 and 5	7. Maximum Exemption
(a) First Liberty Loan converted Third Loan and Second Liberty Loan converted (bonds received since January 1, 1918)	$	$	$	$	$	$ (See Note.) In addition an exemption of $5,000 may be claimed on account of
(b) First and Second Liberty Loans converted into Third Loan and Third Liberty Loan	74 52	5300 00			38	
Fourth Loan		30000 00				
ember 1, 1917						
(c) Total	$ 74 52	$ 35000 00	$	$	$	

NOTE.—This exemption (maximum $40,000) is limited to one and one-half times the amount of bonds of the Fourth Liberty Loan originally subscribed for and still held. State here amount of bonds of the Fourth Liberty Loan originally subscribed for and still held $

14. Enter in the table below income from partnerships, personal service corporations, and estates and trusts:

1. Name of Partnership, Personal Service Corporation, Estate, or Trust. (If Estate or Trust, Give Also Name of Fiduciary.)	2. Period (Enter 1918 or Date on Which Fiscal Year Ended)	3. Cash Dividends	4. Stock Dividends	5. Interest on Tax-Free Bonds (From Foreign and Territorial Obligations)	6. Interest on Liberty Bonds, etc., Issued Since Sept. 1, 1917	7. Other Income	8. Total
		$	$	$	$	$	$
(a) Totals taxable at 1918 rates (see instructions, page 2, under C)		$	$	$	$	$	$
(b) Totals taxable at 1917 rates (see instructions, page 2, under C)		$	$	X X X X	$	$	$

(c) Amount of stock dividends (column 4) taxable at 1918 rates (enter on line 20) $ ... Amount of stock dividends taxable at 1917 rates (enter on line 23) $

Total Net Income Subject to Normal Tax ... Calculation of Tax

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RETURN OF INCOME TAXABLE AT 1918 RATES

A. INCOME FROM BUSINESS OR PROFESSION.

1. Kind of business: Farm — 2. Business address: Lespe, Ventura County, California

3. Total sales and income from business or professional services: $

COST OF GOODS SOLD

4. Labor	$	
5. Material and supplies		
6. Merchandise bought for sale		
7. Other costs (submit schedule of principal items at foot of page or on separate sheet)		
8. Plus inventories at beginning of year		
9. Total	$	
10. Less inventories at end of year		
11. Net Cost of Goods Sold	$	

OTHER BUSINESS DEDUCTIONS:

12. Salaries and wages not reported as "Labor" under "Cost of Goods Sold"	$	
13. Rent		
14. Interest on business indebtedness		
15. Taxes on business and business property		
16. Repairs, wear and tear, obsolescence, depletion, and property losses (explain in table below)		
17. Bad debts arising from sales		
18. Other expenses (submit schedule of principal items at foot of page or on separate sheet)		
19. Total Other Business Deductions	$	

20. Net Cost of Goods Sold Plus Other Business Deductions: $

21. Net Income from Business or Profession: $ 1747972

B. INCOME FROM SALARIES, WAGES, COMMISSIONS, BONUSES, DIRECTOR'S FEES, AND PENSIONS.

1. Occupation.	2. Name and Address of Employer.	3. Gross Income.	4. Deductions, if any.
		$	$

Net Income from Salaries, etc. (total of column 3 minus total of column 4): $ — $ — $ None

C. INCOME FROM PARTNERSHIPS, PERSONAL SERVICE CORPORATIONS, AND ESTATES AND TRUSTS (not including interest on tax-free covenant bonds received through dividends, which should be included in Item F; dividends, which should be included in Item G(2); taxable interest on obligations of the U. S., which should be included in Item G(3), or income thereon at 1917 or prior year rates—see table 14, page 1): $ None

D. PROFIT FROM SALE OF LAND, BUILDINGS, STOCKS, BONDS, AND OTHER PROPERTY.

1. Kind of Property.	2. Year Acquired.	3. Name and Address of Purchaser or Broker.	4. Sale Price.	5. Original Cost or Market Value March 1, 1913.	6. Cost of Subsequent Improvements, if any.	7. Depreciation Subsequently Sustained.
			$	$	$	$

Net Profit from Sales (total of columns 4 and 7 minus total of columns 5 and 6): $ — $ — $ — $ None

E. INCOME FROM RENTS AND ROYALTIES.

1. Kind of Property.	2. Name and Address of Tenant, Lessee, Etc.	3. Amount of Rent and Royalties.	4. Expenses (Wages and Trade Discounts, Repairs, and Property Taxes).	5. Interest.	6. Taxes.	7. Other Expenses (Explain Below).
Pasturage	Various Lessees	$ 219,940 43	$ 219,940 43	$	$	$

Net Income from Rents and Royalties (total of column 3 minus total of columns 4, 5, 6, and 7): $ — $ — $ — $ — $ None

F. INTEREST ON CORPORATION BONDS CONTAINING TAX-FREE COVENANT, ON WHICH A TAX OF 2% WAS PAID BY DEBTOR CORPORATION (including such interest received through fiduciaries): $ 1350

G. OTHER INCOME (not including dividends, or interest on obligations of the United States).

	1. Gross Income.	2. Deductions, if any.
1. Interest on bonds, mortgages, and other obligations of domestic and resident corporations except as reported in Item F	$ 5000	$
2. Interest on bonds of foreign countries and corporations and dividends on stock of foreign corporations	6993 64	
3. Interest on bank deposits, mortgages, etc.	18125 95	
4.		
5.		
Net Total (total of column 1 minus total of column 2)	$ 30119 59	$ — $ 30119 59

H. TOTAL NET INCOME FROM ABOVE SOURCES: $ 48995 31

Form 1040 F—United States Internal Revenue Service

Schedule of farm income and expenses

To be sent with return Form 1040A or 1040 to the collector of internal revenue on or before March 15, 1919

(Stamp) Collector Int. Rev. Jul. 10, 1919, 1st Dist., Ill.
Name Eudora Hull Spalding.
Address 2626 Prairie Avenue, Chicago.

Instructions

This work sheet or schedule of farm income and expenses is to be used in determining the net income from a farm business. It may be used by farm owners who work their own farms or rent them out on shares, or by tenants.

If you have two or more farms, it may be desirable to fill out a separate sheet for each farm.

This schedule is to be delivered to the collector of internal revenue with your income tax return (Form 1040A or Form 1040). You should keep a copy for reference next year.

Income

All the farm income from whatever source must be reported in this schedule. Only income actually received need be included,
80 but this does not mean that the taxpayer must receive cash. Anything of value received instead of cash must be considered income to the extent of its cash value. Thus, the value of groceries, merchandise, etc., received in exchange for eggs, butter, or other product must be reported as income.

The value of farm produce which is consumed by the farmer and his family need not be reported as income; but expenses incurred in raising produce thus consumed must not be claimed as deductions.

If timber sold in 1918 was grown in part before March 1, 1913, the income to be reported is the difference between the fair market value of such timber on March 1, 1913, and the price received, less any expenses of growing the timber that have not heretofore been claimed as deductions. Report such income in the same manner as income from sale of land, in Schedule D of Form 1040 A or Form 1040.

Expenses and other deductions

Report as farm expenses only amounts actually paid out in carrying on the farm business.

Labor.—Only that part of the board of hire labor which is purchased should be included as a deduction. The value of products

furnished by the farm and used in the board of hired labor is not a deductible expense.

Rations purchased and furnished to laborers or share-croppers are deductible as a part of the labor expense.

Do not deduct the value of your own labor or that of your wife or dependent minor children.

Do not deduct amounts paid to persons engaged in household work except to the extent that the services of such employees are used in boarding and otherwise caring for farm laborers. Services of employees engaged in caring for the farmer's own household are not deductible expenses.

Fertilizers, manures, etc.—The cost of manures, commercial fertilizers, lime, raw rock phosphate, etc., that were bought during the year may be included as an expense.

Taxes.—Do not deduct inheritance or estate taxes. Federal income taxes, drainage taxes, or taxes for any improvement or betterment tending to increase the value of the property. Be ready to show tax receipts if possible. Do not deduct taxes on your dwelling or household property.

Interest on indebtedness.—All interest paid on farm mortgages, notes, and other obligations incurred to carry on the farm business should be deducted.

81 Bad debts.—Report only debts, arising from sale that have been reported as income, which have been definitely proved within the year to be worthless.

Repairs and depreciation.—Depreciation claimed should not exceed the actual cost of the property (or its fair market value March 1, 1913, if acquired before that date) divided by its probable life in years. Only such depreciation of farm buildings and equipment as is not offset by repairs may be deducted. Do not deduct repairs or depreciation of the dwelling you occupy or of your personal or household equipment.

Do not claim as a separate item depreciation of livestock or any other property included in your inventory, as such depreciation is taken care of in the reduced amount of the inventory at the close of the year.

Losses.—You may deduct losses of buildings, machinery, and other property not included in your inventory, resulting from fires or other casualties and not compensated for by insurance or otherwise. Losses of property included in your inventory are taken care of by the reduced amount of the inventory at the close of the year.

Automobile expense.—You may deduct expenses of operation, repairs, and depreciation of automobiles used exclusively in the farm business; for a part of the time only a corresponding part of the expenses may be deducted.

How to fill out this schedule

Enter on pages 2 and 3 the amounts received from sales of farm crops, animals, and products, and the value of crops, animals, and

products that were on hand at the beginning and end of the year. Go over the list of farm expenses on page 3 and enter the amount of each kind of expense separately so far as possible. Fill in the statement of repairs and depreciation of farm buildings, etc., on page 4.

In case you have complete farm records already summarized, enter the totals from your books in the spaces provided therefor.

When all the receipts and expenses have been entered, bring the various totals together in the summary on page 4. The figures inclosed in parentheses are intended as a key to aid you in bringing forward the proper totals.

When you have determined the net farm income, transfer the amount to line 21 in Schedule A of the income tax return (Form 1040A or Form 1040).

While this schedule is intended to cover in detail only your 82 income from the farm business, there are added at the bottom of page 4 spaces for making notes regarding income from other sources. Such income should be reported in detail in Schedules B to K of Form 1040A or 1040.

Crops sold and on hand

Page 2

Kind of crops grown	Acres in crop	On hand at beginning of year		
		Quantity	Inventory value	
			Per unit	Total
				$
Totals				$

(1)

Kind of crops grown	Acres in crop	Sold during year		
		Quantity	Sale price	
			Per unit	Total
Beans		*Lbs.* 725,286		$35,615.50
Rental of bean land—1917				2,376.99
Nursery trees		425	75c.	318.75
Totals				$38,311.24

(2)

Crops sold and on hand—Continued

Kind of crops grown	Acres in crop	On hand at end of year		
		Quantity	Inventory value	
			Per unit	Total
				$
Totals				$

(3)

83 *Livestock bought, sold, and on hand*

Kind of animals	On hand at beginning of year		
	Number	Inventory value	
		Per unit	Total
Cows			$
Heifers			
Calves			
Bulls			
Steers			
Horses			
Mules			
Colts			
Ewes			
Lambs			
Brood sows			
Other hogs			
Chickens			
Turkeys			
Ducks			
Bees			
Totals			$

(4)

Kind of animals	Purchased during year		
	Number	Cost	
		Per unit	Total
Cows			$
Heifers			
Calves			
Bulls			
Steers			
Horses			
Mules			
Colts			
Ewes			
84 Lambs			
Brood sows			
Other hogs			
Chickens			
Turkeys			
Ducks			
Bees			
Totals			$

(5)

Livestock bought, sold, and on hand—Continued

Kind of animals	Sold during year		
	Number	Sale price	
		Per unit	Total
Cows			
Heifers			$
Calves			
Bulls			
Steers			
Horses			
Mules			
Colts			
Ewes			
Lambs			
Brood sows			
Other hogs			
Chickens			
Turkeys			
Ducks			
Bees			
Totals			$

(6)

Kind of animals	On hand at end of year			Lost during year (number)
	Number	Inventory value		
		Per unit	Total	
Cows				
Heifers			$	
Calves				
Bulls				
Steers				
Horses				
Mules				
Colts				
Ewes				
Lambs				
Brood sows				
Other hogs				
Chickens				
Turkeys				
Ducks				
Bees				
Total			$	

(7)

Page 3

Crop products sold and on hand

Kind	On hand at beginning of year		Sold during year			On hand at end of ye	
	Quantity	Inventory value	Quantity	Sale price		Quantity	Inventor value
				Per unit	Total		
Lemons...boxes		$	21,863		$106,079.71		$
Oranges....do			3,692		17,083.83		
Walnuts ....pounds			35,322		6,441.80		
Total		$			$129,605.34		$
		(8)		(9)			(10)

86

Livestock products sold and on hand

Milk		$			$		$
Butter							
Cream							
Cheese							
Eggs							
Wool							
Hides							
Honey							
Totals		$			$		$
		(11)			(12)		(13)

Miscellaneous receipts

Description	Amount
Machine work, hire of teams, etc	$
Total	$
	(14)

Inventory of supplies

Kind	Inventory value	
	At beginning of year	At end year
Purchased feeds	$	$
Seeds		
Fertilizers		
Spray materials		
Totals	$	$
	(15)	(16)

87 *Expenses*

Items.	Amount
Hired labor (regular)	84,078.01
Hired labor (extra)	
Board of hired labor	10,212.82
Cost of purchased materials furnished lab.	
Feed, hay, straw, etc	3,062.06
Feed, grain, concentrates	3,636.46
Feed grinding	
Silo filling	
Corn shredding	
Cotton ginning	
Milk hauling	
Ice	
Horseshoeing	
Breeding fees	
Veterinary fees	
Seeds, plants, etc	
Fertilizers, manure	1,773.73
Spray materials	236.12
Twine	
Threshing	
Baling	
Machine work hire	
Fuel and oil for farm work	6,996.30
Barrels, bags, crates	
Shook	7,184.24
Farm insurance	30.00
Taxes	6,085.75
Water rent	
Cash rent	250.00
Interest on farm notes & mortages	1,071.49
Selling expense	2,472.34
Misc. material	19,078.58
Total	$146,167.90
	(17)

88 Page 4 *Repairs and depreciation*

Description	Cost of property (or market value Mar. 1, 1913)	Repairs	Depreciation	
			Rate	Amount
Farm buildings	$	$		$
Farm fence, drains, ditches, etc				
Farm machinery and tools				
Total	$	$		$
		(18)		(19)

Summary

	Amount received for farm products sold or exchanged:		
1.	Crops	(2)	$38,311.24
2.	Livestock	(6)	
3.	Crop products	(9)	129,605.34
4.	Livestock products	(12)	
5.	Miscellaneous	(14)	
6.	**Total receipts**		$167,916.58
	Inventory value of farm crops, etc., at end of year:		
7.	Crops	(3)	$
8.	Livestock	(7)	
9.	Crop products	(13)	
10.	Livestock products	(13)	
11.	Supplies	(16)	13,622.14
12.	**Total inventory at end of year**		$13,622.14
13.	**Total receipts plus inventory at end of year (items 6, plus item 12)**		$181,538.72
	Farm expenses, etc.:		
14.	Cost of livestock purchased during year	(5)	$
15.	Expenses	(17)	146,167.90
16.	Repairs	(18)	
17.	Depreciation	(19)	11,971.43
18.			
19.	**Total expenses, etc**		$158,139.33
	Inventory value of farm crops, etc., at beginning of year:		
20.	Crops	(1)	$
21.	Livestock	(4)	
22.	Crop products	(8)	
23.	livestock products	(11)	
24.	Supplies	(15)	5,923.67
25.	**Total inventory at beginning of year**		$5,923.67
26.	**Total expenses plus inventory at beginning of year item 19 plus (item 25)**		$164,063.00
27.	**Net farm income to be reported in Schedule A, line 21, of Form 1040A or Form 1040 (item 13 minus item 26)**		$17,475.72

89 *Other income to be reported on return*

[Form 1040A or Form 1040]

Description	Gross	Deductions	Net
Income from salaries, wages, commissions, bonuses, director's fees, and pensions (to be reported in Schedule B)	$	$	$
Income from partnerships, personal service corporations, and estates and trusts (to be reported as Item C)			
Income from sale of land, buildings, stocks, bonds, and other property (to be reported in Schedule D)			
Income from rents and royalties (to be reported in Schedule E)			
Interest on corporation bonds containing tax-free covenant, on which a tax of 2% was paid by debtor corporation (to be reported as Item F)			
Other income (to be reported in Schedule G)			
Dividends on stock of corporations organized or doing business in the United States (to be reported as Item K on Form 1040A, or K(a) on Form 1040)			
Interest on obligations of the United States in excess of the exemptions allowed by law (to be reported as Item K(b), Form 1040)			

Rancho Sespe—Depreciation

	Per cent	1913	Since	
Automobile	33⅓		1,050.57	350.19
Barn equipt	20	1,148.85		229.77
Boarding house equipment	10	1,094.51		148.58
Buildings	4	29,890.07	3,396.99	1,331.48
Firing equipt	10	16,639.32	46.59	1,668.59
Japanese dormitory equipt	10	354.30		35.43
Livestock	10	10,327.78	175.00	1,015.28
Office furniture	10	118.10		11.81
Pipe lines con	2	32,136.83		642.74
" " steel	7	12,649.84		885.49
Pumping plant	10	28,414.44		2,841.44
Ranch implements	15	4,668.94	4,009.95	1,301.70
Tractors	15	2,784.25		417.64
Packing house	4	18,501.96	38.73	741.63
Packing house				
Equipment	10	3,110.53	388.65	349.66
Siding		2,093.34		
				11,971.43

b8

90 *Plaintiff's Exhibit C*

This indenture, made this first day of January, A. D. 1905, by and between Morton Denison Hull and Katharine B. Hull, his wife; Eudora Hull Gaylord, formerly Eudora M. Hull, a widow, all of Chicago, Illinois; Marie M. Owsley, formerly Marie M. Boeing, and Frederick D. Owsley, her husband, of Greenwood, Albemarle County, Virginia; Marshall H. Alworth and Nellie Alworth, his wife, of Duluth, Minnesota, and William Edward Boeing, an unmarried man, individually and as trustee for Caroline Marie Boeing and Caroline Marie Boeing, an unmarried woman, both of Greenwood in Albemarle County, Virginia, hereinafter called the lessors, parties of the first part, and Lake Superior Consolidated Iron Mines, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, hereinafter called the lessee, party of the and described as follows, to wit:

First

That the lessors, for and in consideration of the sum of one dollar and other valuable considerations to them in hand paid by the lessee, the receipt and sufficiency whereof are hereby acknowledged, and in further consideration of the covenants, conditions and provisions of this lease to be kept and performed by the lessee, do hereby let, demise and lease unto the lessee, its successors and assigns, for a term of forty-five (45) years from and after the first day of January, 1905, as to the lands hereinafter described and designated tracts, numbers one to five, both inclusive, and for a term of fifty (50) years from and after the first day of January, 1905, as to the lands hereinafter described and designated as tract number six, the lands and premises (for the purposes of this lease regarded as one parcel) situate in the county of St. Louis and State of Minnesota and described as follows, to wit:

Tract No. 1. Lots No. three (3) and four (4) in section six (6), in township fifty-seven (57) north, of range twenty (20) west, of the fourth principal meridian, being the same as the north half of the northwest quarter (N. ½ of N. W. ¼) of said section six (6).

Tract No. 2 The south half of the northeast quarter (S. ½ of N. E. ¼) and the northeast quarter of the southeast quarter (N. E. ¼ of S. E. ¼) of section two (2) in township
91 fifty-seven (57) north of range twenty-one (21) west of the fourth principal meridian.

Tract No. 3. The northwest quarter of the southwest quarter (N. W. ¼ of S. W. ¼) of section (1), and the southeast quarter of the southeast quarter (S. E. ¼ of S. E. ¼) of section two (2) in township fifty-seven (57) north of range twenty-one (21) west of the fourth principal meridian.

Tract No. 4. Lot No. two (2) of section thirty-one (31) in township fifty-eight (58) north of range seventeen (17) west of the fourth principal meridian.

Tract No. 5. Lot No. five (5) and the southeast quarter of the northwest quarter (S. E. ¼ of N. W. ¼) of section six (6) in township fifty-seven (57) north of range twenty (20) west of the fourth principal meridian, being the south half of the northwest quarter (S. ½ of N. W. ¼) of said section six (6), and heretofore and now platted and known as the "town of Hibbing," subject, however, to all outstanding deeds and conveyances reserving all minerals and the right to mine and remove the same, heretofore made and delivered to divers persons by the lessors and their predecessors in interest of and to certain lands in the said "town of Hibbing," and which are now owned by parties other than the lessors, it being the express intention hereof to lease hereby to the lessee all of the said "town of Hibbing" now owned by the lessors, and all the mining rights, interests, and estate of the lessors and each of them in, of, and to all the said lots as expressly reserved by all such deeds and conveyances and subject only to such rights as may be possessed by the grantees under such deeds and conveyances, or their successors in interest.

Tract No. 6. The east half of the southeast quarter (E. ½ of S. E. ¼) of section eleven (11), the southeast quarter of the northwest quarters (S. E. ¼ of N. W. ¼) and the west half of the southwest quarter (W. ½ of S. W. ¼) of section twelve (12), all in township fifty-seven (57) north of range twenty-one (21) west of the fourth principal meridian, and the northwest quarter (N. W. ¼) of section seven (7) in township fifty-seven (57) north of range twenty (20) west of the fourth principal meridian, subject, however, to the certain deed dated July 3, 1896, made and delivered by Morton Denison Hull and certain of the lessors to the village of Hibbing, Minnesota, of an undivided two-thirds interest in ten acres, more or less, in the southwest portion of the southwest quarter of the northwest
92 quarter of said section seven, in township fifty-seven north of range twenty west, and to the certain other deed, unrecorded,

if any there were, given about the same date, and conveying the remaining undivided one-third interest in and to said ten acres of land to said village of Hibbing, which deed or deeds except and reserve unto the grantors therein all minerals that may exist upon, in, or under said premises, with the right to enter upon said premises, and mine and remove such minerals with as slight injury to the surface under the circumstances as can reasonably be done and without liability for damages therefrom, and the former of which was recorded in the office of the register of deeds of St. Louis County, Minnesota, on the 15th day of September, 1900, in book 137 of deeds at pages 232 et seq., reference to which deed and the record thereof is hereby made for greater particularity; it being the intention hereof to lease hereby to the lessee all of said northwest quarter of said section seven, in township fifty-seven north of range twenty west, now owned by the lessors and each of them and all mining rights, interests, and estate of the lessors and each of them in, of, and to all of said land and each and every part thereof, including said land and premises covered by said deed or deeds to said village of Hibbing, and subject only to such rights as may have been obtained by said village of Hibbing and its grantees under said deed or deeds; and the lessee hereby covenants and agrees that it will not conduct its mining operations on the land described in said deed to the village of Hibbing so as to render the grantors thereunder liable to the village of Hibbing and its grantees.

All of the said lands are hereby expressly leased subject to any rights of way, as evidenced by instruments of record, through, over, or across any parcel or parcels thereof heretofore granted to the Duluth, Missabe & Northern Railway Company and the Duluth, Mississippi River & Northern Railroad Company.

Said lands and premises are hereby leased and demised by the lessors to the lessee for the purpose of exploring for and mining, taking out, removing, and shipping therefrom the merchantable iron ore (as well as other mineral as hereinafter provided) which is, or hereafter may be found, on, in, or under said lands, together with the right to construct all buildings and other structures, and to make all excavations, openings, ditches, drains, railroads, wagon roads, and all other improvements upon said lands and premises, which are or may become necessary or suitable for the mining, 90 removing, and shipping of the iron ore therefrom and the carrying on of mining operations thereon and together with the right, during the continuance of this lease, to cut and use all of the timber, other than pine, which may be upon said lands, free and without charge, so far as may be necessary for fuel and in the construction of buildings and structures required in the operation of any mine or mines on said lands, and for drains, tramways, supports, or shafts of or within any such mine or mines, or in connecting the same with any line or lines of railroad over and upon which said ore may be transported. The term merchantable iron ore as used in this lease

shall be taken to mean such ore as shall be merchantable from time to time as the work of mining progresses.

The lessee shall likewise have the right, free and without charge, by itself or its agents, servants, and employes, to erect on any unused portion of the surface of the demised premises, and use, occupy, and enjoy all buildings necessary and convenient for its own use for the purposes of this lease as a mining lease; and the lessee may permit its agents, servants, or employees to erect thereon, use, occupy, and enjoy such store buildings, boarding and dwelling houses as may be necessary and convenient for the use of its employes only. All rents, however, which may be received by the lessee herein for the use, occupation, and enjoyment of such store buildings, boarding and dwelling houses, or the lands upon which they are located, shall be paid over to the lessors herein annually in January of each year at the time when the payment of the royalty is made for the last quarter of the preceding calendar year. In every case, however, any such use and occupation shall absolutely cease and terminate upon the termination of this lease, whether by acts of the parties or either of them, or by expiration of the term, and all such buildings and houses shall be removed from the demised premises within the time and subject to the provisions of article nine hereof.

Second

The lessee for itself, its successors and assigns, hereby covenants and agrees to pay to the lessors, from and after January 1st, 1905, a royalty on all merchantable iron ore mined and shipped from said demised lands, while this lease shall remain in force, at the rate of twenty-five cents (25c) for each gross ton of two thousand two hundred forty pounds (2,240) avoirdupois. The royalty shall be
94 due and payable on the twentieth days of April, July, October, and January in each calendar year, which days are hereinafter called quarter days. The payment on each quarter day shall be for the full amount of ore mined and shipped from said lands during the three months immediately preceding the first day of the month in which payment shall become due.

The lessee for itself, its successors and assigns, further covenants and agrees with the lessors that from January 1st, 1905, to January 1st, 1950, the minimum yearly output from the demised lands under this lease shall be six hundred thousand (600,000) gross tons of iron ore, and that, thereafter, for the remaining five (5) years of the term for which the lands described in tract No. six (6) are hereby leased and demised, the minimum yearly output from said lands described in tract No. six (6) shall be three hundred thousand (300,000) gross tons of iron ore.

And the lessee further covenants and agrees that, for each and every calendar year, during the existence of this lease, it will mine and ship from said lands the agreed yearly minimum output, or, in

case in any one or more of such calendar years the lessee shall not actually mine and ship from said lands the full quantity of the agreed yearly minimum output, the lessee will, nevertheless, pay to the lessors advance royalty, to be considered and treated as ground rent, in addition to the royalty paid for iron ore actually shipped during that year, such sum as shall, together with the amount paid as royalty on iron ore actually shipped during said year, amount to the royalty on the minimum output for that year.

Said advance royalty shall be paid quarterly and at the times and in the manner hereinbefore provided for the payment of royalties on ore actually shipped and in years when no ore is mined shall be in equal quarterly installments. If in any quarter year the lessee shall mine and ship more ore than one-fourth the agreed annual minimum output, the royalty thereon, in excess of the royalty on one-fourth the annual minimum output, may be satisfied pro tanto by the application of any royalty paid for any previous quarter of said year for which ore has not been mined and shipped. And any royalty paid on ore mined and shipped in any quarter year in excess of one-fourth the annual minimum output may be applied to discharge the obligation to pay advance royalty for any subsequent quarter of the same year. The lessee shall not be required in any calendar year to pay royalty on more than the agreed yearly minimum output, unless more than such minimum is mined and
95 shipped in such year, and shall be entitled to apply as payment for royalty on ore mined and shipped in excess of the minimum in any subsequent year or years, any advance or minimum royalty paid in any former year or years for which ore has not been mined and shipped.

The obligation of the lessee to pay advance royalties, as aforesaid, shall continue in force without regard to the quantity or quality of iron ore existing in said lands, during the full term of this lease, or until the same shall be terminated, or surrendered, or assigned in the manner herein provided; and in case of an assignment of this lease, the obligation to mine or make such yearly minimum royalty payment, as well as all other provisions of this lease, shall rest upon and bind the assignee as fully as the lessee is hereby bound.

At the time of making each payment of royalty the lessee shall transmit to the lessors an exact and truthful statement of the amount of iron ore shipped from the demised premises for the period for which royalty is then paid.

Third

The iron ore shipped from the said lands by the lessee shall be weighed by the railway company transporting the same therefrom and the weights so ascertained by the railway company shall prima facie determine the quantity as between the parties hereto.

The lessee shall and will furnish the lessors monthly statements showing the said railroad weights of ore shipped, and the lessors shall have the right, by themselves or their duly authorized agents, to

inspect, view, and test the correctness of the railway company's weights at any time or times and in such manner as it may seem proper to adopt; it being understood that any errors in these respects when ascertained shall be cognizable and corrected, and any such differences shall be settled and paid for upon the next regular quarter day. And the lessee shall and will, on application, at all regular times, furnish the lessors with copies of analyses and all information connected with exploration or development work upon said lands, and the lessors shall have the right by themselves or by duly authorized agents, to enter upon said lands, mines, and premises at any time or times and inspect and survey the same and to measure the quantity of ore which shall have been mined thereon or shipped therefrom, provided they shall not unnecessarily or unreasonably hinder or interrupt the operations of the lessee.

96 Fourth

The lessee hereby covenants and agrees to conduct all its mining operations on said lands in a good, workmanlike manner and in accordance with the requirements of good engineering, and so as not to do or cause or permit any unnecessary or unusual permanent waste or injury to the said premises, or inconvenience or hindrance in the subsequent operations of the mine or mines thereon, and in the working of said mine or mines the lessee shall depost all earth, rock, and other useless material or rubbish at such place or places on the demised lands and in such manner as will not conflict with or embarrass the future operations of said mine or mines.

And the lessors hereby agree that the lessee may deposit on the lands hereby demised and designated as tract No. six (6), earth, rock, and other useless material or rubbish from the certain lands now under lease to and controlled by the lessee under a certain mining lease dated the second day of October, 1899, made by George L. Burrows and others, as lessors, and commonly known as the Burrows-Rust lease, but only at such place or places thereon and in such manner as will not conflict with or in any way embarrass the future operations of any mine or mines on the lands described in said tract No. six (6); Provided, however, that the lessee secures from the lessors of said Burrows-Rust lease the right, license, and permission to deposit substantially a similar yardage of waste material and stripping removed in the lessee's stripping and mining operations on the lands hereby demised on the certain of the tracts embodied in the Burrows-Rust lease and described as the south half of the southeast quarter (S. ½ of S. E. ¼) section one (1), the southeast quarter of the northeast quarter (S. E. ¼ of N. E. ¼) and the northeast quarter of the southwest quarter (N. E. ¼ of S. W. ¼) of section twelve (12), and the southeast quarter of the northwest quarter (S. E. ¼ of N. W. ¼) of section two (2), all in township fifty-seven (57) north, of range twenty-one (21) west of the fourth principal meridian, in St. Louis County, Minnesota.

Fifth

The lessee further covenants and agrees to pay all the taxes and assessments, ordinary and extraordinary, general and specific,
97 which may be levied or assessed upon said lands demised hereby and on the iron ore mined thereon and all improvements and personal property thereon, while this lease remains in force, and to furnish the lessors with duplicate tax receipts showing the payment of all such assessments and taxes; provided, however, that the lessee shall always have the right to contest in the courts or otherwise, the validity of such taxes and assessments in case it shall deem the same unlawful, unjust, unequal or excessive, or to take such other steps or proceedings as it may deem necessary to secure a cancellation, reduction, readjustment, or equalization thereof before it shall be required hereunder to pay and discharge the same or any part thereof. And upon the termination of this lease, by surrender or otherwise, as herein provided, the lessee shall and will peaceably surrender possession of the said lands and the whole thereof to the lessors.

The lessee further hereby covenants and agrees that while this lease remains in force, or until it is surrendered or terminated in the manner as herein provided, it will protect said lands and premises and the improvements and iron ore in stockpile thereon from all mechanics' and laborers' liens and keep the title to the same free and clear from all clouds and incumbrances arising from such claims or liens in any way because of its mining operations thereon or the use and occupation thereof by the lessee, its agents, servants, employees, or contractors.

Sixth

The lessors hereby covenant and represent that the demised lands and premises are now owned by them in fee, free and clear from all incumbrances, in the following proportions, to wit:

Morton Denison Hull, an undivided one-sixth interest thereof; Eudora Hull Gaylord, an undivided one-sixth interest thereof; Marie M. Owsley, an undivided one-sixth interest thereof; Marshall H. Alworth, an undivided one-third interest thereof; William Edward Boeing, an undivided one-twelfth interest thereof; and William Edward Boeing, as trustee, for the use and benefit of Caroline Marie Boeing, under and by virtue of the provisions of a certain trust deed dated the 13th day of May, 1903, between Caroline Marie Boeing, as party of the first part, and William Edward Boeing, as party of the second part, and recorded in the office of the register of deeds of St. Louis County, Minnesota, on July 1st, 1903, in book 201 of deeds at pages 230 et seq, an undivided one-twelfth interest thereof.

98 And the lessors, each for his or her interest alone, will the lessee in the quiet and peaceful possession of the demised

premises and each and every part thereof, during the term aforesaid, or until the termination of this lease as herein provided, warrant and defend against all lawful claims and demands of any and all persons and corporations, save and except any such claims or demands as may be created by the lessee or exist by virtue of its agents, servants, or employees.

The several payments required to be made hereunder shall be made, for the use and benefit of the several lessors and in the proportions in this article named, at and to such bank or banks in the city of Chicago, Illinois, or elsewhere in any one or more of the United States, as the lessors, each for himself, or his or their legal representatives, successors in interest or assigns, may from time to time in writing designate, and the bank or banks so designated shall be deemed the agent or agents of the lessors, respectively, for the purpose of receiving, collecting, and receipting for such payments.

The payments provided in this lease, to be made by the lessee, shall be made in gold coin of the United States of the present standard or its equivalent.

Seventh

It is mutually covenanted between the parties hereto, and this lease is granted and accepted upon condition, that the lessee shall have the right, at any time, on thirty (30) days notice to terminate this agreement and lease, by giving written notice in the manner hereinafter provided to the lessors who shall and will in such case acknowledge in writing the receipt of such notice, and this lease shall terminate thirty (30) days after the giving of such notice whether the same shall be so acknowledged or not.

All arrearages and sums, including taxes, which shall be due and payable under this lease, up to the time of its termination as set forth in the said notice, must and will be paid by the lessee within thirty (30) days after such termination, upon settlement and adjustment thereof, but the lessors shall not in any event be required or liable to repay to the lessee any sum which has been paid as advance royalty; and the lessee upon such termination must and will forthwith execute and record in the office of the register of deeds of St. Louis County, Minnesota, a formal relinquishment of this lease, provided the same shall have been recorded there.

99 Said notice of and for the termination of this lease may be given by registered letter or letters, mailed from any post office in the United States, postage prepaid, and addressed to the lessors, or their heirs, legal representatives, successors in interest, or assigns, at their last known places of residence, or in care of the bank or banks at which the royalty is for the time being payable.

And it is further agreed that the lessee shall have the right to contract with others to work any mine or mines, which now are, or

hereafter may be, discovered upon said lands, or sublet or subcontract the same, or to assign this lease, at the option of the lessee, with the same rights and privileges, as are herein granted to the lessee, it being expressly understood however, that any such assignment shall not operate as a release or discharge of the lessee from the performance of the conditions of this lease, until and unless the lessors shall specifically consent to said assignment in writing; and it is further provided that the uninterrupted right of the lessee, to take, use and ship the iron ore from said lands, as herein provided, shall continue unsuspended, notwithstanding any disagreement between the parties hereto respecting the same or this lease, provided it or they shall duly pay for all ore shipped, or agreed to be shipped or paid for, at the time or times and in the manner in and by this lease provided.

Eighth

This lease is granted and accepted upon the condition that, if the royalty hereby reserved, or the advance royalty or ground rent hereby provided for or agreed to be paid, or any part thereof, be and remain unpaid after the days and times above specified, and if the same shall remain in default for a period of sixty (60) days, or in case the lessee shall fail to keep any other of the covenants or conditions herein expressed to be kept and performed by it, and such failure shall continue for sixty (60) days after the receipt by it of written notice from the lessors, specifying the default, neglect, and failure complained of, then, and from thenceforth, and in either of said events, but not otherwise, it shall be lawful for the lessors, at their option, to terminate this lease and to take possession of the said demised premises with or without any previous process whatever, and to re-enter, have and possess the same again as fully as if no lease had been given to the lessee, and the lesse and all parties claiming under it shall be wholly excluded therefrom and this lease shall become and be wholly void and at an end subject to the provisions of article ninth hereof.

Any notice of non-payment or other default or other notice in and by this lease provided to be given to the lessee may be served by the lessors upon the lessee by registered letter deposited in any postoffice in the United States with postage prepaid, addressed to the lessee at the Wolvin Building at Duluth, Minnesota, or at such other place as the lessee, or its successors in interest, may from time to time in writing state to the lessors is the postoffice address of the holder hereof.

The lessors hereby reserve and shall at all times, have, possess, and hold a lien upon all ore mined and upon all improvements made upon said demised premises by the lessee, as a security for any unpaid balances of money due hereunder, such balances being deemed and to be treated as balances of purchase money, and which lien

may be enforced against such property in like manner as liens conferred by chattel mortgage are or may be entitled to be enforced by the laws of the State of Minnesota.

Ninth

It is mutually covenanted that upon the termination of this lease, whether by acts of the parties, or either of them, or by expiration of the term, the lessee shall have sixty (60) days in which to remove all engines, tools, machinery, railroad tracks, buildings, dwellings, and structures and all other property of every nature or description erected or placed by it upon the demised premises, provided that all taxes, royalties, and other dues shall have been paid and all the other conditions performed by the lessee; but the lessee shall not remove or impair any structure placed in the mine or mines upon said premises, or any timber or frame work necessary to the use or maintenance of the shafts or the approaches to the mine or mines, or the tramways within the same, and on failure within the said sixty (60) days to so remove such property, all of the same shall belong to and become the property of the lessors or their successors in interest.

Tenth

In case ores or minerals other than iron ore shall be discovered upon the demised premises, the lessee shall be, and hereby is, expressly granted the right to mine and ship the same and
101 the royalty thereon to be paid to the lessors shall be thirty-three (33) per centum of the market value or selling price of all such ores or minerals, in the market or markets therefor, less all transportation charges which transportation charges shall first be deducted from such market value or selling price, and retained by the lessee; and such royalty shall be due and payable at the same times and in the same manner that the royalty on iron ore shall be due hereunder; and the quarterly reports of the grade, kind, quantity, and quality of such other ores and minerals shall be made at the same times and in the same manner as reports concerning iron ore are required to be made hereunder.

Eleventh

All covenants, provisions, terms, and conditions of this lease shall run with the land and shall inure to the benefit of and be binding upon the heirs, legal representatives, successors in interest, successors, and assigns of the lessors and lessee, respectively.

In witness whereof the lessors have hereunto set their respective hands and seals, and the lessee has caused these presents to be executed in its corporate name by its president or vice president, and attested by its secretary or assistant secretary, and its corporate seal to be hereunto affixed, the day and year first above written.

This lease is executed in quadruplicate, and the four papers thus executed shall be deemed but one instrument.

(Signed) MORTON DENISON HULL. [SEAL.]
(Signed) KATHARINE B. HULL. [SEAL.]

As to lessors Hull:
(Signed) BARNARD M. BAUMER.
(Signed) NELLIE O. MILLER.

(Signed) EUDORA HULL GAYLORD. [SEAL.]

As to lessor Gaylord:
(Signed) W. W. BENEDICT.
(Signed) T. W. HEALY.

(Signed) MARIE M. OWSLEY. [SEAL.]
(Signed) FREDERIC D. OWSLEY. [SEAL.]

As to lessors Owsley:
(Signed) W. S. RODES.
(Signed) ALBERT P. OWSLEY.

(Signed) MARSHALL H. ALWORTH. [SEAL.]
(Signed) NELLIE ALWORTH. [SEAL.]

102 As to lessors Alworth:
(Signed) L. R. FERNALD.
(Signed) J. M. CRAMER.

(Signed) WILLIAM EDWARD BOEING. [SEAL.]
Individually and as Trustee.

As to lessor William Edward Boeing individually and as trustee:
(Signed) W. S. RODES.
(Signed) ALBERT P. OWSLEY

(Signed) CAROLINE MARIE BOEING. [SEAL.]

As to lessor Caroline Marie Boeing:
(Signed) W. S. RODES.
(Signed) ALBERT P. OWSLEY.

LAKE SUPERIOR CONSOLIDATED IRON MINES,
By (Signed) THOMAS MURRAY, *Vice President.*
[SEAL.]
Attest:
(Signed) C. D. FRASER,
Secretary.

As to the lessee:
(Signed) JOHN D. CLARKE.
(Signed) G. N. WHITE.

STATE OF ILLINOIS,
County of Cook, ss.

On this 13th day of March, A. D. 1905, before me, a notary public within and for said county and State, personally appeared Morton Denison Hull and Katharine B. Hull, his wife, to me personally known and known to be the identical persons described in and who executed the foregoing and within instrument and lease, and they ackowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) BERNARD J. BAUMER,
Notary Public, Cook County, Illinois.

103 STATE OF CALIFORNIA,
County of Los Angeles, ss.

On this 20th day of March A. D. 1905, before me, a notary public within and for said county and State, personally appeared Eudora Hull Gaylord, a widow, to me personally known and known to be the identical person described in and who executed the foregoing and within instrument and lease, and she acknowledged that she executed the same as her free act and deed.

[NOTARIAL SEAL.] (Signed) W. W. BENEDICT,
Notary Public, Los Angeles County, California.

STATE OF VIRGINIA,
County of Albermarle, ss.

On this third day of April A. D. 1905, before me, a notary public within and for said county and State, personally appeared Marie M. Owsley and Frederic D. Owsley, her husband, to me personally known and known to be the identical persons described in and who executed the foregoing and within instrument and lease, and they acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) W. S. RODES,
Notary Public, Albermarle County, Virginia.
My commission expires 22nd day of April 1907.

STATE OF FLORIDA,
County of Hillsboro, ss.

On this 27th day of March, A. D. 1905, before me, a notary public within and for said county and State, personally appeared Marshall H. Alworth and Nellie Alworth, his wife, to me personally known to be the identical persons described in and who executed the foregoing and within instrument and lease, and they acknowledge that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) J. M. CRAMER,
Notary Public, Hillsboro County, Florida.
My commission expires Dec. 13, 1908.

104 STATE OF VIRGINIA,
County of Albermarle ss.

On this third day of April, A. D. 1905, before me, a notary public within and for said county and State, personally appeared William Edward Boeing, an unmarried man, to me known to be the identical person described in and who executed the foregoing and within instrument and lease individually and as trustee for said Caroline Marie Boeing, and he acknowledged that he executed the same as his own free act and deed, and, as said trustee, as the free act and deed of said Caroline Marie Boeing.

[NOTARIAL SEAL.] (Signed) W. S. RODES,
Notary Public, Albermarle County, Virginia.
My commission expires 22nd day of April, 1907.

STATE OF VIRGINIA
County of Albermarle, ss.

On this third day of April, A. D. 1905, before me, a notary public within and for said county and State, personally appeared Caroline Marie Boeing, an unmarried woman, to me personally known and known to be the identical person described in and who executed the foregoing and within instrument and lease, and she acknowledged that she executed the same as her free act and deed.

[NOTARIAL SEAL.] (Signed) W. S. RODES,
Notary Public, Albermarle County, Virginia.

My commission expires 22nd day of April, 1907.

105 STATE OF NEW YORK,
City and county of New York, ss.

On this 14th day of April, A. D. 1905, before me, a notary public within and for said county and State, personally appeared Thomas Murray, to me personally known, who being by me first duly sworn did say that he is the vice president of the Lake Superior Consolidated Iron Mines, a corporation duly existing under the laws of the State of New Jersey and the lessee named in the within and foregoing instrument and lease, and that the seal affixed to the foregoing instrument and lease is the corporate seal of said corporation, and that said lease was signed and sealed in behalf of said corporation by authority of its board of directors, and said Thomas Murray duly acknowledged said lease to be the free act and deed of said corporation.

[NOTARIAL SEAL.] (Signed) E. A. BRENNAN,
Notary Public in and for the County and State of New York.

106 *Plaintiff's Exhibit D*

This indenture, made this ninth day of December, in the year of our Lord one thousand nine hundred and one, by and between Morton Denison Hull and Katharine B. Hull, his wife; Eudora M. Gaylord, formerly Eudora M. Hull, and Edward L. Gaylord, her husband, all of Chicago, Illinois; Marie M. Owsley, formerly Marie N. Boeing, and Frederick D. Owsley, her husband, of Greenwood, Albemarle County, Virginia; Marshall H. Alworth and Nellie Alworth, his wife, of Duluth, Minnesota; and Frank A. Schulte, of Detroit, Michigan, as guardian of William Edward Boeing and Caroline Marie Boeing, minors, as parties of the first part, hereinafter designated as the lessors, and William H. Cole, of Duluth, Minnesota, as party of the second part, hereinafter designated as the lessee.

Witnesseth that the lessors, for and in consideration of the sum of one dollar, and other valuable considerations to them in hand paid by the lessee, the receipt whereof is hereby acknowledged, and in

further consideration of the covenants, promises, and conditions hereinafter contained, to be kept and performed by the lessee, do hereby let, lease, and demise unto the lessee, his heirs and assigns, for a term of fifty (50) years from and after the first day of January, 1902, as to an undivided five-sixths interest in and to the land hereinafter described, now owned as tenants in common by the lessors other than said guardian, and for the term of twenty-five (25) years from and after the first day of January, 1902, as to the remaining undivided one-sixth thereof, now held and owned as tenants in common by the said minors, William Edward Boeing and Caroline Marie Boeing, of which interest said Frank A. Schulte, as the duly qualified and acting guardian of said minors, is the lessor, the following-described lands situated in the county of St. Louis and State of Minnesota, to wit:

The northeast quarter of the northeast quarter of section eleven (11) and the north half of the northwest quarter of section twelve (12) in township fifty-seven (57) north, range twenty-one (21) West;

Said lands are hereby leased by the lessors to the lessee for the purpose of exploring for and mining, taking out, and removing therefrom the merchantable iron ore (as well as other mineral as hereinafter provided for), which is or which may hereafter be
107 found on, in, or under said lands, together with the right to construct all buildings and to make all excavations, openings, ditches, drains, railroads, wagon roads, and all other improvements on said lands and premises, which are or which may become necessary or suitable for the mining or removal of the iron ore therefrom and the carrying on of mining operations thereon.

Provided, however, that the lessee, his heirs and assigns, shall have the right at any time, upon thirty day's notice, to terminate this agreement and lease in so far as it requires the lessee to mine ore on said lands, or to pay royalty therefor, or to pay taxes thereon, by giving written notice in manner as hereinafter provided to the lessor or their legal representatives or their assigns, who shall in such case acknowledge in writing the receipt of such notice, and this lease shall terminate thirty days after the giving of such notice, whether so acknowledged or otherwise. All arrearages and sums, including taxes, which may be due and payable under this lease up to the time of its termination, as set forth in such notice, shall be paid within thirty days after such termination, and the lessee, his heirs and assigns, upon such termination, shall immediately execute and record a formal relinquishment of such lease in the office of the register of deeds of the said county of St. Louis. Such notice of termination may be delivered personally to the lessors or their legal representatives or assigns, or it may be given by registered letters mailed from any post office in the United States, postage prepaid, and addressed to the lessors, or their legal representatives or assigns, at their last known respective places of residence.

The lessors hereby further agree that the lessee, his heirs and assigns, shall have the right to assign this lease, or contract with

others to work any mine or mines which are now or may hereafter be discovered upon said lands, or subcontract or sublet the same, at his or their option, with the same rights and privileges as are herein granted to the lessee; it being expressly understood, however, that any such assignment shall not operate as a release or discharge of the lessee from the performance of the conditions of this lease until and unless the lessors shall specifically consent to said assignment in writing.

The lessee, for himself, his heirs and assigns, hereby covenants and agrees to and with the lessors that the lessee will from and after the first day of January, 1902, on or before the tenth days of January, April, July, and October in each calendar year of
168 the term covered by this lease, or during the period of time for which this contract and lease continues in force, pay to the lessors for all iron ore which shall be mined and removed from said lands during the three calendar months next preceding the first day of the month in which payment is to be made as aforesaid a royalty at and of twenty-five cents per ton for all iron ore so taken out, mined and carried away from all said lands and premises, each ton in all cases to be reckoned at 2,240 pounds.

The lessee, for himself, his heirs and assigns, hereby covenants and agrees with the lessors that from and after January 1", 1902, during each and every calendar year of the period or term of this lease, or until the surrender or assignment of the same in the manner herein provided, the lessee will mine and remove from said lands (which for all and singular the purposes of this lease shall be inseparable and considered as only one tract or parcel) at least one hundred thousand (100,000) gross tons of iron ore annually, or that he will pay to the lessors an advance royalty, which shall be treated and considered as ground rent, of twenty-five cents per gross ton on said minimum quantity each year, the same as if actually mined and removed; it being the express intention hereof that it shall be optional with the lessee either to mine, remove, and ship away iron ore from said lands during each calendar year after January 1", 1902, while this lease continues in force, or in lieu thereof to pay the lessors an advance royalty of twenty-five cents per ton on said annual minimum quantity of one hundred thousand tons, the same as if actually mined and removed.

The said obligation of the lessee to pay said advance royalty of twenty-five cents per ton upon one hundred thousand tons annually, or such ground rent of twenty-five thousand dollars, shall continue in force without regard to the quantity or quality of ore existing in the premises, during the full term of this lease or until the same is terminated and surrendered or assigned in the manner herein provided, and, in case of an assignment of this lease in the manner herein provided the obligation to mine and pay for such annual minimum quantity of ore, as well as all other provisions of this lease, shall rest upon and bind such assignee as fully as the lessee is hereby bound.

If ore is not mined and removed from said lands during any calendar year or years commencing with January 1", 1902, while this lease is in force, said advance royalties (to be considered as ground rent as aforesaid) on said annual minimum of one
109 hundred thousand tons shall be paid quarterly at the times and in the manner as hereinbefore provided for the payment of royalties for ore actually mined and shipped away; and in case mining operations are carried on and the quantity of iron ore mined and shipped away in any quarter of any calendar year is less than 25,000 tons, advance royalty shall be paid in such sum as shall, together with the amount actually paid as royalties, equal sixty-two hundred and fifty dollar' ($6,250), and in such case, such sum or amount so paid as advance royalties shall be credited in the payment of the quarterly royalty for any other quarter or quarters of said year when more than 25,000 gross tons are mined and shipped away, such credit to apply only on the excess of the minimum quantity mined and shipped during such quarter; and in case more than 25,000 gross tons are mined and shipped away in any quarter of any calendar year, upon which royalties shall be paid as hereinbefore provided, the amount of such payment in excess of $6,250.00 shall be credited in the payment of the quarterly minimum royalty upon the same for any other quarter or quarters of such year when less than 25,000 tons is mined and shipped away; it being the express intention hereof that the lessee shall not be required in and for any such calendar year to pay a greater aggregate royalty that $25,000, except and unless a greater quantity than 100,000 gross tons is mined and shipped away in such entire year, and that for all advance royalties and ground rent which shall be paid in any such calendar year and for which ore shall not be mined and shipped away, the lessee shall have the right, without further payment of royalty and free of charge, to mine and ship away ore in the manner as provided in the next succeeding paragraph hereof, that is to say:

If for any year or years of the life of this contract said lessee shall thus pay monies, either as advance royalties or ground rent, in excess of the royalty on ore actually mined and removed from said lands during such year or years, then such monies so paid in excess of the royalty on ore actually mined and removed, shall be credited and applied as payments of royalties on ore which may be mined and removed from said lands, or any thereof, during any subsequent year or years, in excess of the stipulated minimum quantity of 100,000 tons.

Provided, however, that during the first year of the life of this contract, the foregoing provisions of this contract shall be modified in this, that the minimum annual output required during said
110 first year shall be fifty thousand (50,000) gross tons instead of one hundred thousand gross tons, and the minimum royalty or ground rent required to be paid during said first year shall be twelve thousand five hundred dollars ($12,500) instead of twenty-five thousand dollars, making the minimum quarterly payments to

be made during said first year thirty-one hundred and twenty-five dollars ($3,125) instead of sixty-two hundred and fifty dollars.

The lessee, his heirs and assigns, at the time of making each of said payments, shall transmit to the lessors, their successors and assigns, an exact truthful statement of the amount of iron ore removed from said lands for the three calendar months for which payment is to be made. The iron ore so taken out by the lessee, his heirs and assigns, from said lands, shall be weighed by the railroad company transporting the same therefrom, which weights shall determine the quantity as between the parties hereto prima facie.

The lessee, his heirs and assigns, shall furnish the lessors monthly statements showing the aforesaid weight; the right is, however, hereby conceded to and reserved by the lessors, by their duly authorized agents, to inspect, view, and test the correctness of the railroad company's weights at any time and in such manner as may seem proper to adopt, it being understood that any errors in these respects, when ascertained, are to be cognizable and corrected and any such differences shall be settled and paid for at the next regular quarterly payment.

The lessee hereby covenants and agrees to conduct all its mining operations on said lands in a good, workmanlike manner and in accordance with the requirements of good engineering and so as not to do or cause or permit any unnecessary or unusual permanent injury to the same or inconvenience or hindrance in the subsequent operation of the mine or mines thereon.

The lessee shall pay all taxes and assessments, ordinary and extraordinary, general and specific, which may be levied or assessed upon the lands hereby demised and on the iron ore mined thereon and on all improvements and personal property thereon while this lease is in force, and shall furnish the lessors with duplicate tax receipts showing the payment of any such assessments or taxes: Provided, however, The lessee shall have the right to contest, in the courts or otherwise, the validity of any such taxes or assessments in case it shall deem the same unjust, unequal, or excessive, or to take such other steps or proceedings as it may deem necessary to compel
111 or secure a reduction, re-adjustment, or equalization thereof, before it shall be required hereunder to pay and discharge the same or any part thereof, and at the termination of this lease, or in case the same is surrendered in manner hereinbefore provided, the lessee further hereby agrees peaceably to surrender possession of said lands to the lessors.

The lessee further hereby covenants and agrees that, while this lease is in force and until it is surrendered or assigned in manner as herein provided, he will protect said lands and premises from all mechanic's or labor liens and keep the title to the same force and clear of all clouds or encumbrances arising therefrom in any way on account of his mining operations thereon, or the use and occupation thereof by him, his agents, servants, or employees or his contractors.

The lessors hereby expressly covenant and represent that the said leased lands are now owned in fee by them in the following proportion, to wit:

Morton Denison Hull, and undivided one-sixth interest thereof; Eudora M. Gaylord, an undivided one-sixth interest thereof; Marshall H. Alworth, an undivided one-third interest thereof; William Edward Boeing and Caroline Marie Boeing, minors (for whom Frank A. Shultz is guardian as aforesaid), each an undivided one-twelfth thereof; and Marie M. Owsley, an undivided one-sixth thereof.

The several payments required hereunder to be made shall be made at the Corn Exchange National Bank in Chicago, Illinois, or at any other bank in the city of Chicago, or elsewhere, as the lessors or their legal representatives or assigns may from time to time in writing designate, and the bank or banks so designated shall be considered and treated as the agent or agents of the lessors respectively for the purpose of receiving, collecting, and receipting for such payments. The payments provided in this lease to be made by the lessee shall be made in gold coin of the United States of the present standard, or its equivalent.

It is mutually understood and agreed that upon the termination of this lease, whether by the acts of the parties or either of them, or by expiration of the term, the lessee, his heirs or assigns, shall have sixty days in which to remove all engines, tools, machinery, railroad tracks, or structures erected or placed by it or them upon said premises, provided that all taxes, royalties, or other dues have been paid and other conditions performed, but he or they shall not remove or
112 impair any supports placed in the mine or mines nor any timber or framework necessary to the use and maintenance of shafts or the approaches to the mine or mines, or the tramways within the same, and on failure within the time above specified to so remove such property, all of the same shall belong to and become the property of the lessors or their successors in interest.

The lessors expressly reserve to themselves (and the lessee hereby assents thereto) the right, by their duly authorized agents, to enter into or upon said leased lands, mines, and premises at any time or times to inspect and survey the same and to measure the quantity of ore which shall have been mined and removed therefrom, not unnecessarily or unreasonably hindering or interrupting the operations of the lessee.

This lease is upon the express condition that if such royalty or any part thereof be and remain unpaid after the days and times above specified, and if the same remain in default for a period of sixty days, or in case the lessee fails to keep any of the covenants or conditions herein expressed to be kept and performed by him, and which failure shall continue for sixty days after receiving written notice from the lessors specifying the default, neglect, or failure complained of, then and from thence forth, and in either of these events, but not otherwise, it shall be lawful for the lessors at their option to take possession of said leased lands with or without any previous process whatever, to re-enter and have and possess the same again as fully as if no lease had been given to the lessee, and he and all parties claiming under him shall be wholly excluded therefrom, and the lessors hereby reserve and shall at all times have, possess, and hold a lien upon all ore mined and upon all improvements made upon said lands and premises by the lessee for unpaid balances hereunder.

In case other ores or minerals are discovered and mined on said lands by said lessee, he being hereby expressly granted the right to mine and remove the same, the royalty thereon shall be thirty-three (33) per centum of the market value or selling price of all such ores or minerals at the markets therefor, less all transportation charges which shall first be deducted from such market value or selling price and retained by the lessee, and such royalty shall be due and payable at the same times and in the same manner that the royalty on the iron ore shall be due and payable, and quarterly reports of the
113 quality, grade, kind, and quantity of such ores and minerals shall be made at the same times and in the same manner that the iron ore reports are required to be made hereunder.

The covenants, terms, and conditions of this lease shall run with the land and be in all respects binding and operative upon the heirs, legal representatives, and assigns of the lessors and the successor or successors of said guardian, and upon the successors, heirs, and assign of the lessee.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

(Signed) MORTON DENISON HULL. [SEAL.]
(Signed) KATHARINE B. HULL. [SEAL.]

Signed, sealed, and delivered in presence of—
(Signed) R. H. WALTER,
(Signed) JOHN A. VERHOEVEN,
As to Morton Denison Hull and wife.

(Signed) EUDORA M. GAYLORD. [SEAL.]
(Signed) EDWARD L. GAYLORD. [SEAL.]
(Signed) R. H. WALTER,
(Signed) JOHN A. VERHOEVEN,
As to Eudora M. Gaylord and husband.

(Signed) MARIE M. OWSLEY. [SEAL.]
(Signed) FREDERICK D. OWSLEY. [SEAL.]
(Signed) HENRIETTA E. OWSLEY,
(Signed) HANNAH NICHOLSON,
As to Marie M. Owsley and husband.

(Signed) MARSHALL H. ALWORTH. [SEAL.]
(Signed) NELLIE ALWORTH. [SEAL.]
(Signed) GEORGE E. GIBSON,
(Signed) FRANK W. HEIMICK,
As to Marshall H. Alworth & Wife.

(Signed) FRANK A. SCHULTE, [SEAL.]
As Guardian of William Edward Boeing and Caroline Marie Boeing, Minors.
(Signed) JNO. B. SEVALD,
(Signed) RICHARD G. LAMRBECHT,
As to Frank A. Schulte, Guardian.

(Signed) WILLIAM H. COLE. [SEAL.]
(Signed) J. S. WASHBURN,
(Signed) M. B. HAUGEN,
As to W. H. C.

114 STATE OF ILLINOIS,
County of Cook, ss:

On this 13th day of December, 1901, before me, a notary public within and for said county, personally appeared Morton Denison Hull and Katharine B. Hull, his wife, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) JOHN A. VERHOEVEN,
Notary Public, Cook County, Ill.

STATE OF ILLINOIS,
County of Cook, ss:

On this 13th day of December, 1901, before me, a notary public within and for said county, personally appeared Eudora M. Gaylord and Edward L. Gaylord, her husband, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) JOHN A. VERHOEVEN,
Notary Public, Cook County, Ill.

STATE OF VIRGINIA,
County of Albemarle, ss:

On this 18th day of December, 1901, before me, a notary public within and for said county, personally appeared Marie M. Owsley and Frederick D. Owsley, her husband, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) W. L. WALLACE,
Notary Public, Albermarle County, Va.

115 STATE OF MINNESOTA,
County of St. Louis, ss:

On this 23rd day of December, 1901, before me, a notary public within and for said county, personally appeared Marshall H. Alworth and Nellie Alworth, his wife, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) FRANK W. HEIMICK,
Notary Public, St. Louis Co., Minn.

STATE OF MICHIGAN,
County of Wayne, ss:

On this 3rd day of February, 1902, before me, a notary public within and for said county, personally appeared Frank A. Schulte, to me known to be the person described in and who executed the foregoing instrument and lease and upon oath acknowledged that he is the only lawful acting guardian of said William Edward Boeing and

Caroline Marie Boeing, minors, and that as such guardian he executed the foregoing instrument in behalf of said minors with full authority so to do and by order of the probate court of St. Louis County, Minnesota, and he acknowledged the same to be his free act and deed individually and as guardian as aforesaid, and the free act and deed of said William Edward Boeing and Caroline Marie Boeing.

[NOTARIAL SEAL.] (Seal) JNO. B. SEVALD,
Notary Public, Wayne Co., Mich.

STATE OF MINNESOTA,
County of St. Louis, ss:

On this first day of February, 1902, before me, a notary public within and for said county, personally appeared William H. Cole, to me well known to be the same person described in and who executed the foregoing instrument, and he acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] (Signed) J. L. WASHBURN,
Notary Public, St. Louis Co., Minn.

116 *Plaintiff's Exhibit E*

This indenture, made the first day of July, in the year of our Lord one thousand nine hundred and two, by and between Morton Dension Hull and Katharine B. Hull, his wife, Eudora Hull Gaylord, formerly Eudora M. Hull, and Edward L. Gaylord, her husband, all of Chicago, Illinois, Marie M. Owsley, formerly Marie M. Boeing, and Frederick D. Owsley, her husband, of Greenwood, Albemarle County, Virginia; Marshall H. Alworth and Nellie Alworth, his wife, of Duluth, Minnesota; and Frank A. Schulte, of Detroit, Michigan, as guardian of William Edward Boeing and Caroline Marie Boeing, minors, as parties of the first part, hereinafter designated as the "lessors," and Louis W. Hill, of St. Paul, Minnesota, as party of the second part, hereinafter designated as the "lessee."

Witnesseth that the lessors, for and in consideration of the sum of one dollar, and other valuable considerations to them in hand paid by the lessee, the receipt whereof is hereby acknowledged, and in further consideration of the convenants, promises, and conditions hereinafter contained, to be kept and performed by the lessee, do hereby lease and demise unto the said lessee, his heirs and assigns, for a term of fifty (50) years from and after July 1, 1902, as to an undivided five-sixths interest in and to the lands hereinafter described, now owned as tenants in common by the lessors, other than said guardian, and for a term of twenty-five years from and after said July 1, 1902, as to the remaining undivided one-sixth thereof now held and owned as tenants in common by the said minors William Edward Boeing and Caroline Marie Boeing, of which interests the said Frank A. Schulte as the duly qualified and acting guardian of said minors, is the lessor, the following described lands situated in the county of St. Louis and State of Minnesota, to wit:

The north half of the northeast quarter and the southwest quarter of the northeast quarter of section six (6) in township fifty-seven (57) north, of range twenty (20) west of the forth principal meridian, subject to any rights of way as evidenced by instruments of record, through, over or across any parcel or parcels thereof, heretofore granted to the Duluth, Missabe & Northern Railway Company and the Duluth, Mississippi River & Northern Railway Company.

117 Said lands are hereby leased by the lessors to the lessee for the purpose of exploring for and mining and taking out and removing therefrom the merchantable iron ore (as well as other minerals as hereinafter provided for), which is or which hereafter may be found on, in or under the said lands, together with the right to construct all buildings and to make all excavations, openings, ditches, drains, railroads, wagon roads, and all other improvements upon the said lands and premises which are or may become necessary or suitable for the mining or removal of iron ore therefrom, and the carrying on of mining operations thereon, and together with the right, during the continuance of this lease, to cut and use all the timber, other than pine, which may be upon said lands, free and without charge, so far as may be necessary for fuel and in the construction of buildings required in the operation of any mine or mines upon said lands, and for drains, tram-ways, supports or shafts of or within any such mine or mines, or in connecting the same with any line or lines of railroad over or upon which said ore may be transported.

Provided, however, that the lessee, his heirs and assigns, shall have the right at any time upon thirty (30) days notice, to terminate this agreement and lease, in so far as it requires the lessee to mine ore upon said lands or pay royalty therefor, or pay taxes thereon, by giving writ'en notice in manner as hereinafter provided to the lessors, or their legal representatives, or their assigns, who shall in such case acknowledge in writing the receipt of such notice, and by paying all arrearages and sums, including taxes, which may be due and payable under this lease up to the time of its termination, as set forth in said notice, and upon the execution and recording of a formal relinquishment of such lease in the office of the register of deeds of said county of St. Louis, so as to effectually surrender all rights thereunder, whereupon such lease shall terminate in thirty day after the giving of such notice. Such notice of termination may be delivered personally to the lessors, their legal representatives or assigns, or may be given by registered letters mailed from any post office in the United States, postage prepaid, and addressed to the lessors or their legal representatives or assigns at their last known place of residence.

The lessors hereby further agree that the lessee, his heirs and assigns, shall have the right to assign this lease or contract

118 with others to work any mine or mines which are now or may hereinafter be discovered upon said lands, or subcontract of

sublet the same at his or their option, with the same rights and privileges as are herein granted to the lessee; it being expressly understood, however, that any such assignment shall not operate as a release or discharge of the lessee from the performance of the conditions of this lease, until or unless the lessors shall specifically consent to such asignment in writing.

The lessee, for himself, his heirs and assigns, hereby covenants and agrees to and with the lessors, that from and after October 1″, 1902, during each and every calendar year of the period or term of this lease, or until the surrender or assignment of the same in the manner hereinafter provided, the lessee will mine and remove from the said lands, at least one hundred and fifty thousand (150,000) gross tons of iron ore annually, or that he will pay to the lessors an advance royalty, which shall be treated and considered as ground rent, of twenty-five cents per gross ton on said minimum quantity each year, the same as if actually mined and removed; it being the express intention hereof that it shall be optional with the lessee either to mine, remove, and ship away iron ore from said lands during each calendar year after October 1″, 1902, while this lease continues in force, or in lieu thereof to pay the lessors an advance royalty of twenty-five cents per ton on said annual minimum quantity of 150,000 tons, the same as if actually mined and removed. The said obligation of the lessee to pay said advance royalty of twenty-five cents per ton upon said 150,000 tons annually, or such ground rent of thirty-seven thousand five hundred dollars ($37,500), shall continue in force without regard to the quantity or quality of ore existing in the said premises, during the full term of this lease, or until the same is terminated, surrendered, or assigned in the manner herein provided, and in case of an assignment of this lease in the manner herein provided, the obligation to mine or pay for such minimum annual quantity of ore, as well as all other provisions of this lease, shall rest upon and bind the said assignee as fully as the lessee is hereby bound, to-wit from October 1″, 1902, up to and including the 30″ day of September, 1903, the minimum amount of ore to be thus mined and removed, shall be one hundred thousand (100,000) tons, or in lieu thereof the minimum amount of advance royalty or ground rent to be paid in case such quantity of ore is not mined, shall be twenty-five thousand dollars (25,000).

119 The royalty upon ore to be mined and removed from said premises, as above provided, shall be paid quarterly on or before the tenth day of the months of January, April, July and October of each and every year, for all of the ore so mined and removed during the three months next preceding the month in which such payments are to be made, and in case during any quarterly period of this lease no ore is mined, or in case ore is not mined in sufficient quantities so that the royalty thereon during each quarter, at the rate above specified shall for the year extending from October 1″, 1902, up to and including the 30″ day

of September, 1903, amount to six thousand two hundred and fifty dollars ($6,250), and for each quarter during each and every year thereafter, during the period of this lease, amount to nine thousand three hundred and seventy-five dollars ($9,375), then and in such case the advance royalty or ground rent hereinbefore agreed to be paid, or a sufficient sum, together with the amount paid upon the ore actually mined and removed, to equal such sums, shall be paid at the quarterly dates above specified; it being the intention of this lease that while the lessee shall be required to pay for all of the ore mined and removed from said premises during each and every year of this lease, at the rate of royalty above specified and at the dates above specified, he shall not be required to pay more than the sum of thirty-seven thousand five hundred dollars ($37,500) either as royalty or advance royalty, during any year when less than 150,000 tons of ore is mined and removed from said premises, and therefore that in case more ore is thus paid for on account of any quarter of any calendar year during the term of this lease than is mined and removed from said premises during such quarter, the same may be mined and removed during any subsequent quarter or said year without further payment, after the minimum amount for such subsequent quarter has been mined and removed, and in case ore is mined, removed, and paid for during any quarter of any calendar year in excess of the minimum quantity required for such quarter, such excess payment may be applied upon the minimum royalty to be paid for in any subsequent quarter of such year when less than the minimum quantity is mined and removed; and if for any year or years during the life of this lease the lessee shall thus pay monies, either as advance royalties or ground rent, in excess of the royalty on ore actually mined and removed
120 from said lands during such year or years, then such monies so paid in excess of the royalty on ores actually mined and removed, shall be credited and applied as payments of royalty on ore which may be mined and removed from said lands during any subsequent year or years in excess of the stipulated minimum quantity of 150,000 tons.

It is the intention of the parties hereto that in the adjustment of royalties and advance royalties under this lease, that the quarter of the current year ending December 31", 1902, shall be adjusted as a fractional portion of a year, to the end that thereafter the years as specified in this contract shall be calendar years.

The lessee, his heirs or assigns, at the time of making each of said payments, shall transmit to the lessors, their legal representatives or assigns, an exact, truthful statement of the amount of iron ore removed from said lands for the three calendar months for which said payment is made. The iron ore so taken out by the said lessee, his heirs or assigns, from said lands, shall be weighed by the railroad company transporting the same therefrom, which weights shall determine the quantities as between the parties hereto prima facie.

The lessee, his heirs or assigns, shall furnish the lessors monthly statements showing the aforesaid weight; the right, however, is hereby conceded to and reserved by the lessors, by their duly authorised agents, to inspect, view, and test the correctness of the railroad company's weights at any time, in such manner as may seem proper to adopt; it being understood that any errors in these respects, when ascertained, are to be cognizable and corrected, and any such differences shall be settled and paid for at the next regular quarterly payment.

The lessee hereby covenants and agrees to conduct all his mining operations on said lands in a good, workmanlike manner and in accordance with the requirements of good engineering, and so as not to do or cause or permit any unnecessary or unusual permanent injury to the same or inconvenience or hindrance in the subsequent operation of the mine or mines thereon.

The lessee shall pay all taxes and assessments, ordinary and extraordinary, general and specific, which may be levied or assessed upon the lands demised hereby, and on the iron ore mined thereon, and on all improvements and personal property thereon while this lease is in force and shall furnish the lessors with duplicate tax receipts showing the payment of any such assessments or taxes;

provided, however, that the lessee, shall always have the
121 right to contest, in the courts or otherwise, the validity of such taxes or assessments, in case he shall deem the same unjust, unequal, or excessive, or to take such other steps or proceedings as he may deem necessary to compel or secure a reduction, readjustment, or equalization thereof before he shall be required hereunder to pay and discharge the same or any part thereof, and at the termination of this lease, or in case the same is surrendered in manner as hereinbefore provided, the lessee further hereby agrees peacefully to surrender possession of said lands to the lessors.

The lessee further hereby covenants and agrees that, while this lease is in force and until it is surrendered or assigned, in manner as herein provided, he will protect said lands and premises from all mechanic's or labor liens, and keep the title to the same free and clear of all clouds or incumbrances arising therefrom in any way on account of his mining operations thereon, or the suse and occupation thereof by him, his heirs or assigns, servants, or employees, or contractors.

The lessors hereby each for himself but not for the others, expressly covenant and represent that the said leased lands are now owned by them in fee in the following proportions, to wit:

Morton Denison Hull, an undivided one-sixth interest thereof; Eudora Hull Gaylord, an undivided one-sixth interest thereof; Marie M. Owsley, an undivided one-sixth interest thereof; Marshall H. Alworth, an undivided one-third interest thereof; and William Edward Boeing and Caroline Marie Boeing, minors (for whom said Frank A. Schulte is guardian as aforesaid), each an undivided one-twelfth interest thereof.

And they do hereby covenant with said lessee that the said premises are free and clear from all incumbrances, and that the lessee, in the quiet and peaceful possession of said premises, and each and every part thereof, during the term aforesaid, or until the termination of this lease, they will and do hereby warrant and defend; provided that the said lessee shall keep, observe, and perform each and every of the covenants, terms, agreements, and conditions in this indenture, on the part of the said lessee made, or to be kept, observed, and performed.

The several payments required hereunder to be made shall be made at the Corn Exchange National Bank, of Chicago, Illinois, or at any other bank in the said city of Chicago, or elsewhere, as the lessors or their legal representatives or assigns may from time to time in writing designate, and the bank or banks so designated shall be considered and treated as the agent or agents of the lessors,
122 respectively, for the purpose of receiving, collecting, and receipting for such payments. The payments provided in this lease to be made by the lessee shall be made in gold coin of the United States of the present standard, or its equivalent.

It is mutually understood and agreed that upon the termination of this lease, whether by the act of the parties, or either of them, or by expiration of the term, the lessee, his heirs or assigns, shall have 60 days in which to remove all engines, tools, machinery, railroad tracks, or structures erected or placed by him, or them, upon said premises; provided that all taxes, royalties, and other dues shall have been paid and other conditions performed; but he or they shall not remove or impair any supports placed in any mine or mines nor any timber nor framework necessary to the use or maintenance of the shafts or the approaches to the mine or mines or the tramways within the same, and on failure within the time above specified to so remove such property, all of the same shall belong to and become the property of the lessors, or their successors in interest.

The lessors expressly reserve to themselves (and the lessee hereby assents thereto) the right by their duly authorized agents to enter into or upon the leased lands, mines, and premises at any time or times to inspect or survey the same and to measure the quantity of ore which shall have been mined or removed therefrom, not unnecessarily nor unreasonably hindering or interrupting the operations of the lessee.

This lease is upon the express condition that if such royalty or any part thereof be and remain unpaid after the days and times above specified and if the same remain in default for a period of 60 days, or in case the lessee fails to keep any of the covenants or conditions herein expressed to be kept and performed by him, and such failure shall continue for 60 days after receiving written notice from the lessors specifying the default, neglect, and failure complained of, then and from thenceforth and in either of those events, but not otherwise, it shall be lawful for the lessors, at their option, to take

possession of said leased lands with or without any previous process whatever, to reenter and have and possess the same again as fully as if no lease had been given to the lessee, and he and all parties claiming under him shall be wholly excluded therefrom and the lessors hereby reserve and shall at all times have, possess, and hold a lien upon all ore mined and upon all improvements made upon said lands and premises by the lessee for unpaid balances hereunder.

In case other ores or minerals are discovered and mined
123 on said lands by the lessee, he being hereby expressly granted the right to mine and remove the same, the royalty thereon shall be thirty-three per centum of the market value or selling price of all such ores or minerals, at the market or markets therefor less all transportation charges which shall be first deducted from such market value, or selling price and retained by the lessee, and such royalty shall be due and payable at the same times and in the same manner that the royalty on the iron ore shall be due and payable, and quarterly reports of the quality, grade, kind, and quantity of such ores or minerals shall be made at the same times and in the same manner that the iron ore reports are required to be made hereunder.

The covenants, terms, and conditions of this lease shall run with the land and be in all respects binding and operative upon the heirs, legal representatives, and assigns of the lessors and the successor or successors of said guardian and upon the heirs and assigns of the said lessee.

It is further agreed between the parties hereto, as one of the conditions of this lease, that for and on account of services heretofore rendered and rights existing with respect to the procurement of the execution of this lease, that, in addition to the rents and royalties hereinbefore agreed to be paid by the lessee to the lessors, the said lessee agrees to pay to one Richard Webb and one Richard J. Mitchell, the sum of $14,500, in manner and form following, that is to say: That when and as often as royalties become due and payable under the terms of this lease from the lessee to the lessors, whether the same be royalties upon ore actually mined and removed or minimum royalties as herein agreed to be paid, the said lessee shall pay to the said Webb the sum of one and one-quarter cents per ton and to the said Mitchell the sum of one and one-quarter cents per ton, at the quarterly dates hereinbefore specified, upon all of the ore paid for by the said lessee to the said lessors in and by the payment of the quarterly rents or royalties as hereinbefore agreed to be paid annually, until the sum of $7,250 is thus paid to said Webb and a like sum of $7,250 is thus paid to said Mitchell, aggregating the said sum of $14,500, and when such payments so made aggregate such sum, then this provision of this lease and contract shall be and become terminated and satisfied and the said Webb and said Mitchell shall in such case acknowledge the same in writing, in such manner that the same may be made a matter of record. And it is further

agreed that any default in the making of such payments, shall
124 constitute a default in the terms and conditions of this lease, with like consequences to the lessee and with like rights and powers to the lessors as are provided herein for any other default on the part of the lessee, it being expressly herein agreed that the lessors shall have the right and power to enforce the performance of this provision of this contract in behalf of said Webb and said Mitchell.

In testimony whereof, the said parties to said lease have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered in presence of—

(Signed) RICHARD E. DOOLEY,
(Signed) JOHN A. VERHOEVEN,
As to Morton Denison Hull and Katharine B. Hull.

(Signed) MORTON DENISON HULL. [SEAL.]
(Signed) KATHERINE B. HULL. [SEAL.]
(Signed) EUDORA HULL GAYLORD. [SEAL.]
(Signed) EDWARD L. GAYLORD. [SEAL.]

(Signed) RICHARD F. DOOLEY,
(Signed) JOHN A. VERHOEVEN,
As to Eudora H. Gaylord and Edward L. Gaylord.

(Signed) MARIE M. OWSLEY. [SEAL.]
(Signed) FREDERIC D. OWSLEY. [SEAL.]

(Signed) MARY AGNES BRUCE,
(Signed) J. D. RAY,
As to Marie M. Owsley and Frederick D. Owsley.

(Signed) MARSHALL H. ALWORTH. [SEAL.]
(Signed) NELLIE ALWORTH. [SEAL.]

(Signed) F. W. HEIMICK,
(Signed) EDGAR C. SMITH,
As to Marshall H. Alworth and Nellie Alworth.

(Signed) FRANK A. SCHULTE, [SEAL.]
Guardian of William E. and Caroline M. Boeing, Minors.

(Signed) J. T. KEENA,
(Signed) RICHARD G. LAMBRECHT,
As to Frank A. Schulte, Guardian.

(Signed) LOUIS W. HILL. [SEAL.]

(Signed) JOHN G. WILLIAMS,
(Signed) J. H. GRUBER,
As to Louis W. Hill.

125 STATE OF ILLINOIS,
County of Cook, ss:

On this 12th day of August, 1902, before me, a notary public within and for said county, personally appeared Morton Denison Hull and Katharine B. Hull, his wife, and Eudora Hull Gaylord and Edward L. Gaylord, her husband, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) JOHN A. VERHOEVEN,
Notary Public, Cook Co., Illinois.

STATE OF VIRGINIA,
County of Albemarle, ss:

On this 15th day of August, 1902, before me, a notary public within and for said county, personally appeared Marie M. Owsley and Frederick D. Owsley, her husband, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) W. L. WALLACE,
Notary Public, Albemarle Co., Va.

STATE OF MINNESOTA,
County of St. Louis:

On this 23rd day of August, 1902, before me, a notary public within and for said county, personally appeared Marshall H. Alworth and Nellie Alworth, his wife, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) FRANK W. HEIMICK,
Notary Public, St. Louis Co., Minn.

126 STATE OF MICHIGAN,
County of Wayne, ss:

On this 20th day of August, 1902, before me, a notary public within and for said county, personally appeared Frank A. Schulte, to me known to be the same person described in and who executed the foregoing instrument, and upon oath acknowledged that he is the only lawful and acting guardian of said William Edward Boeing and Caroline Marie Boeing, minors, and that as such guardian he executed the foregoing instrument in behalf of said minors with full authority so to do and by order of the probate court of St. Louis County, Minnesota, and he acknowledged the same to be his free act and deed, individually and as guardian aforesaid, and the free act and deed of said William Edward Boeing and Caroline Marie Boeing.

[NOTARIAL SEAL.] (Signed) J. T. KEENA,
Notary Public, Wayne County, Mich.

STATE OF MINNESOTA,
County of St. Louis, ss:

On this 25th day of August, 1902, before me, a notary public within and for said county, personally appeared Louis W. Hill, to me well known to be the same person described in and who executed the foregoing instrument, and he acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] (Signed) J. H. GRUBER,
Notary Public, St. Louis Co., Minn.

127 *Plaintiff's Exhibit F*

This indenture, made this first day of October in the year of our Lord one thousand nine hundred and two, between Morton Denison Hull and Katharine B. Hull, his wife, Eudora Hull Gaylord, formerly Eudora M. Hull, and Edward L. Gaylord, her husband, all of Chicago, Illinois; Marie M. Owsley, formerly Marie M. Boeing, and Frederick D. Owsley, her husband, of Greenwood, Albermarle County, Virginia; Marshall H. Alworth and Nellie Alworth, his wife, of Duluth, Minnesota, William Edward Boeing, unmarried, and Caroline Marie Boeing, unmarried, both of Greenwood, Albermarle County, Virginia, as parties of the first part, hereinafter called the "lessors," and Louis W. Hill, of St. Paul, Minnesota, party of the second part, hereinafter called the "lessee."

Witnesseth that the lessors, for and in consideration of the sum of one dollar and other valuable considerations to them in hand paid by the lessee, the receipt of which is hereby acknowledged, and in further consideration of the covenants, terms, and conditions hereinafter contained, to be kept and performed by the lessee, do hereby let, lease, and demise unto the lessee, his heirs and assigns, for a term of fifty (50) years from and after January 1, 1903, the following described lands and premises situated in the county of St. Louis and State of Minnesota, to wit:

The southwest quarter of the southwest quarter, also known as lot three (3), of section twenty-two (22) in township fifty-eight (58) north, of range twenty (20) west, subject to the rights of the Swan River Logging Company, or its successors in interest, to occupy the surface of said premises for a period of ten years from January 10, 1900, under the terms and conditions of a certain agreement made between the lessors herein as parties of the first part and the said Swan River Logging Company as party of the second part, dated January 10, 1900, reference to which is hereby made, and subject to any railroad rights of way now of record.

Said lands are hereby leased by the lessors to the lessee for the purpose of exploring for, mining, taking out, and removing therefrom the merchantable iron ore (as well as other minerals as hereinafter provided for), which is or which hereafter may be found on, in or under the said lands, together with the right to construct all

buildings, make all excavations, openings, ditches, drains,
128 railroads, wagon roads, and all other improvements upon said lands and premises which are or may become necessary or suitable for the mining or removal of the iron ore therefrom and the carrying on of mining operations thereon, and together with the right, during the continuance of this lease, to cut and use all the timber, other than pine, which may be upon said lands, free and without charge, so far as may be necessary for fuel and in the construction of buildings required in the operation of any mine or mines upon said lands, and for drains, tramways, supports or shafts of or within any such mine or mines, or in connecting the same with any line or lines of railroad over or upon which the said ore may be transported, such pine timber, with the right to cut and remove the same, being expressly reserved from the operation of this lease.

The term "merchantable iron ore" as used in this lease shall be taken to mean such ore as shall be merchantable from time to time as the work of mining progresses.

Provided, however, that the lessee, his heirs or assigns, shall have the right at any time, upon thirty (30) days notice to terminate this agreement and lease in so far as it requires the lessee to mine ore on said lands or to pay royalty therefor or to pay taxes thereon, by giving written notice in the manner as hereinafter provided, to the lessors or their legal representatives or assigns, who shall in such case acknowledge in writing the receipt of such notice, and upon the execution and delivery to the said lessors of an instrument in form and substance sufficient to relinquish this lease and all rights thereunder, executed in such manner as to be entitled to record in the office of the register of deeds of said St. Louis County, and the payment of all arrearages and sums, including taxes which may be due and payable under this lease up to the time of its termination, as set forth in said notice, then and thereupon this lease shall be and become terminated. Such notice of termination may be delivered personally to the lessors or their legal representatives or assigns, or may be given by registered letters mailed from any post office in the United States, postage prepaid, and addressed to the lessors, their legal representatives or assigns, at their last known places of residence.

The lessors hereby further agree that the lessee, his heirs and assigns, shall have the right to assign this lease, or to contract with others to work any mine or mines which are now or may hereafter be discovered upon said lands, or sub-contract or sub-let the same at
his or their option, with the same rights and privileges as are
129 herein granted to the lessee; it being expressly understood however, that any such assignment shall not operate as a release or discharge of the lessee from the performance of the conditions of this lease, until or unless the lessors shall specifically consent to such assignment in writing.

The lessee, for himself, his heirs and assigns, hereby further covenants and agrees with the lessors that from and after January

1, 1903, during each and every calendar year of the period or term of this lease, or until the surrender or assignment of the same in the manner herein provided, the lessee will mine and remove from said lands at least fifty thousand (50,000) gross tons of iron ore annually, or that he will pay to the lessors an advance royalty which shall be treated as ground rent, of twenty-five cents per gross ton on said minimum annual quantity each year, the same as if actually mined and removed; it being the express intention hereof that it shall be optional with the lessee either to remove and ship away iron ore from said lands during each calendar year while this lease continues in force, or in lieu thereof to pay the lessors an advance royalty of twenty-five cents per gross ton on said annual minimum quantity as herein provided, the same as if such ore were actually mined and removed. The said obligation of the lessee to pay said advance royalty of twenty-five cents per gross ton upon said minimum annual quantity, as herein provided, or such ground rent of twelve thousand five hundred dollars ($12,500) for each year, shall continue in force without regard to the quantity or quality of the ore existing in the premises, during the full term of this lease, or until the same is terminated, surrendered or assigned in the manner herein provided; and in case of an assignment of this lease in the manner herein provided, the obligation to mine or pay for such minimum annual quantity of ore, as well as all other obligations of this lease, shall rest upon and bind such assignee as fully as the lessee is hereby bound.

The lessee further covenants and agrees that the payments of said royalty of twenty-five cents per gross ton upon all ore mined and removed from said premises during the term of this lease, shall be made on or before the 15th days of January, April, July, and October in each year for all of the iron ore mined and removed from said premises during the three months next preceding the first day of the month in which such payments are to be made. And the lessee further covenants that the payments of ground rent or minimum royalty hereinbefore provided to be made, shall likewise be paid quarterly at the same dates hereinbefore specified for the payment of royalty upon ore actually mined and removed from said premises.

If in any quarter year the lessee shall ship less than one quarter of the agreed minimum output for that year and in a subsequent quarter of such year shall ship more than the agreed minimum output for such subsequent quarter, the lessee in making payment of the royalty upon such excess, shall be entitled to credit at the rate of twenty-five cents per ton up to the amount of royalty previously paid on ore not shipped, and shall likewise in any quarter year when less than the agreed minimum output for such quarter shall be mined and removed, in making payment of the minimum royalty for such quarter, be entitled to credit at the rate above specified for the

excess of royalty paid over and above the agreed minimum for all preceding quarters of such year, to the end that the royalties for the several quarters of each year shall be adjusted so that the lessee shall not be required to pay royalty upon more than the annual minimum output hereinbefore specified, unless he shall during such year mine and remove from said premises more than said annual minimum quantity.

If for any year or years of the life of this lease the lessee shall thus pay monies, either as advance royalties or ground rent, in excess of the royalty on ore actually mined and removed from said lands during such year or years, then such monies so paid in excess of royalties on ore actually mined and removed, shall be applied as payments of royalties on ore mined and removed from said lands during any subsequent year or years in excess of the stipulated minimum quantity for such year.

The lessee, its heirs and assigns, at the time of making each of such payments, shall transmit to the lessors, their legal representatives or assigns, an exact and truthful statement of the amount of iron ore removed from said lands during the three calendar months for which such payment is to be made. The iron ore so taken out by the lessee, his heirs or assigns, from said lands, shall be weighed by the railroad company transporting the same therefrom, which weights shall determine the quantity as between the parties hereto, prima facie.

The lessee, his successors and assigns, shall furnish the lessors monthly statements showing the aforesaid weights; the right is hereby, however, conceded to and reserved by the lessors, by
131 their duly authorized agents, to inspect, view, and test the correctness of the railroad company's weights at any time and in such manner as may seem proper to adopt; it being understood that any errors in these respects, when ascertained, are to be cognizable and corrected and any such differences shall be settled and paid for at the next regular quarterly payment.

The lessee hereby covenants to conduct all its mining operations on said lands in a good, workmanlike manner and in accordance with the requirements of good engineering and so as not to do, cause, or permit any unnecessary or unusual permanent injury to the same, or inconvenience or hindrance in the subsequent operation of the mine or mines thereon.

The lessee shall pay all taxes and assessments, ordinary and extraordinary, general and specific, which may be levied or assessed upon the lands demised hereby and on the iron ore mined thereon, and on all improvements and personal property thereon, while this lease is in force, and shall furnish the lessors with duplicate tax receipts showing the payment of any such assessments or taxes; provided, however, that the lessee shall always have the right to

contest in the courts or otherwise, the validity of any such taxes or assessments in case he shall deem the same unjust, unequal, or excessive, or to take such other steps or proceedings as he may deem necessary to compel or secure a reduction, readjustment, or equalization thereof, before he shall be required hereunder to pay and discharge the same, or any part thereof, and at the termination of this lease, or in case the same is surrendered in manner as hereinbefore provided, the lessee further hereby agrees peaceably to surrender possession of the said lands to the lessors.

The lessee further hereby convenants and agrees that, while this lease is in force and until it is surrendered or assigned in the manner as herein provided, he will protect said lands and premises from all mechanics' or labor liens and keep the title to the same free and clear of all clouds or incumbrances arising therefrom in any way on account of his mining operations thereon or the use and occupation thereof by him, his agents, servants or employees or his contractors.

The lessors hereby expressly covenant and represent that the said leased lands are now owned by them in fee in the following proportions, to wit:

Morton Denison Hull, an undivided one-sixth interest thereof;
Eudora Hull Gaylord, an undivided one-sixth interest thereof;
Marie M. Owsley, an undivided one-sixth interest thereof;
132 Marshall H. Alworth, an undivided one-third interest thereof;
William Edward Boeing, an undivided one-twelfth interest thereof; and Caroline Marie Boeing, an undivided one-twelfth interest thereof.

The several payments required hereunder to be made shall be made at the American National Bank in Chicago, Illinois, or at any other bank in the city of Chicago or elsewhere as the lessors or their legal representatives or assigns may from time to time in writing designate, and the bank or banks so designated shall be considered and treated as the agent or agents of the lessors, respectively, for the purpose of receiving, collecting, and receipting for such payments. The payments provided in this lease to be made by the lessee shall be made in gold coin of the United States of the present standard, or its equivalent.

It is mutually understood and agreed that upon the termination of this lease, whether by the acts of the parties or either of them, or by expiration of the term, the lessee, his heirs or assigns, shall have sixty days in which to remove all engines, tools, machinery, railroad tracks or structures erected or placed by him or them upon said premises, provided that all taxes, royalties, and other dues shall have been paid and other conditions performed; but he or they shall not remove or impair any supports placed in the mine or mines, or any timber or frame work necessary to the use or maintenance of the

shafts or the approaches to the mine or mines, or the tramways within the same, and on failure within the time above specified to so remove such property, all of the same shall belong to and become the property of the lessors or their successors in interest.

The lessors expressly reserve to themselves (and the lessee hereby assent thereto) the right, by their duly authorized agents, to enter into or upon the said leased lands, mines, and premises, at any time or times to inspect and survey the same and to measure the quantity of ore which shall have been mined or removed therefrom, not unnecessarily or unreasonably hindering or interrupting the operations of the lessee.

This lease is upon the express condition that if such royalty, or any part thereof, be and remain unpaid after the days and times above specified, and if the same remain in default for a period of sixty days, or in case the lessee fails to keep any of the covenants or conditions herein expressed to be kept and performed by him, and such failure shall continue for sixty days after receiving written notice from the lessors specifying the default, neglect, and
133 failure complained thereof, then and from thenceforth and in either of these events, but not otherwise, it shall be lawful for the lessors at their option to take possession of said leased lands, with or without any previous process whatever, to re-enter and have and possess the same again as fully as if no lease had been given to the lessee, and he and all parties claiming under him shall be wholly excluded therefrom, and the lessors hereby reserve and shall at all times have, possess, and hold a lien upon all ore mined and upon all improvements made upon said lands and premises by the lessee for unpaid balances hereunder.

In case other ores or minerals are discovered and mined on said lands by the lessee, he being hereby expressly granted the right to mine and remove the same, the royalty thereon shall be thirty-three per centum of the market value or selling price of all such ores or minerals at the market or markets therefor, less all transportation charged which shall first be deducted from such market value or selling price and retained by the lessee, and such royalty shall be due and payable at the same times and in the same manner that the royalty on the iron ore sha' be due and payable, and quarterly reports of the grade and kind, quality and quantity of such ores and minerals shall be made at the same times and in the same manner that the iron ore reports are required to be made hereunder.

The covenants, terms, and conditions of this lease shall run with the land and be in all respects binding and operative upon the heirs, executors, administrators and assigns of the respective parties hereto.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered in presence of—

(Signed) MORTON DENISON HULL. [SEAL.]
(Signed) KATHARINE B. HULL. [SEAL.]
(Signed) JOHN A. VERHOEVEN,
(Signed) RICHARD E. DOOLEY,
As to Morton D. Hull & wife
(Signed) EUDORA HULL GAYLORD. [SEAL.]
(Signed) EDWARD S. GAYLORD. [SEAL.]
(Signed) JOHN A. VERHOEVEN,
(Signed) RICHARD E. DOOLEY,
As to Eudora H. Gaylord & husband.
(Signed) MARIE M. OWSLEY. [SEAL.]
(Signed) FREDERICK D. OWSLEY. [SEAL.]
(Signed) E. E. BOEING,
(Signed) E. W. ORTMANN,
As to Marie M. Owsley & husband.
(Signed) MARSHALL H. ALWORTH. [SEAL.]
(Signed) NELLIE ALWORTH. [SEAL.]
(Signed) J. L. WASHBURN,
(Signed) M. B. HANGEN,
As to Marshall H. Alworth & wife.
(Signed) WILLIAM EDWARD BOEING. [SEAL.]
(Signed) CAROLINE M. BOEING. [SEAL.]
(Signed) J. L. WASHBURN,
(Signed) W. D. BAILEY,
As to William Edward Boeing.
(Signed) W. E. BOEING,
(Signed) E. W. ORTMANN,
As to Caroline M. Boeing.
(Signed) LOUIS W. HILL. [SEAL.]
(Signed) H. H. PARKHOUSE,
(Signed) F. A. PEIL,
As to Louis W. Hill.

135 STATE OF ILLINOIS,
County of Cook, ss:

On this 20th day of October before me, a notary public within and for said county, personally appeared Morton Denison Hull and Katharine B. Hull, his wife, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[SEAL.] (Signed) JOHN A. VERHOEVEN,
Notary Public, Cook Co., Ill.

STATE OF ILLINOIS,
County of Cook, ss:

On this 20th day of October, 1902, before me, a notary public within and for said county, personally appeared Eudora Hull Gaylord and

Edward L. Gaylord, her husband, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[SEAL.] (Signed) JOHN A. VERHOEVEN,
Notary Public, Cook Co., Ill.

STATE OF VIRGINIA,
City of Richmond, ss:

On this 15th day of October, 1902, before me, a notary public within and for said county, personally appeared Marie M. Owsley and Frederick D. Owsley, her husband, and Caroline Marie Boeing, unmarried, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[SEAL.] (Signed) JNO. R. JETER, Jr.,
Notary Public, City of Richmond, Va.

My commission expires Jany. 3r', 1903.

136 STATE OF MINNESOTA.
County of St. Louis, ss:

On this 24th day of October, 1902, before me, a notary public in and for said county, personally appeared Marshall H. Alworth and Nellie Alworth, his wife, to me known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[SEAL.] (Signed) J. L. WASHBURN,
Notary Public, St. Louis Co., Minn.

STATE OF MINNESOTA,
County of St. Louis, ss:

On this 8th day of October, 1902, before me, a notary public within and for said county, personally appeared William Edward Boeing, unmarried, to me well known to be the same person described in and who executed the foregoing instrument, and he acknowledged that he executed the same as his free act and deed.

[SEAL.] (Signed) W. D. BAILEY,
Notary Public, Saint Louis County, Minnesota.

137 STATE of MINNESOTA,
County of Ramsey, ss.

On this 3rd day of November, 1902, before me, a notary public within and for said county, personally appeared Louis W. Hill, to me well known to be the same person described in and who executed the foregoing instrument, and he acknowledged that he executed the same as his free act and deed.

[SEAL] (Signed) C. C. MCELWEE,
Notary Public, Ramsey Co., Minn.

To Norton Denison Hull, Katherine B. Hull, Eudora M. Gaylord, Edward L. Gaylord, Marie M. Owsley, Frederick D. Owsley, Marshall H. Alworth, Nellie Alworth, William Edward Boeing, Caroline Marie Boeing:

Upon the lands situate in St. Louis County, Minnesota, and described as the southwest quarter of the southwest quarter (also known as lot numbered three), of section twenty-two (22), in township fifty-eight (58) north, of range twenty (20) west, which under date of October 1st, 1902, was executed by the fee owners of said lands to Louis W. Hill, and which thereafter, under date of November 10th, 1902, was by said Louis W. Hill and wife assigned to Marcus L. Fay, and by said Fay and wife was, under date of March 24th, A. D. 1903, assigned to the Crescent Mining Company, was by instrument of assignment bearing date June 8th, 1903, duly assigned by the said Crescent Mining Company to Oliver Iron Mining Company, which, by virtue of the several assignments aforesaid, is the present owner of said lease.

Dated Duluth, Minn., September 8th, 1903.

OLIVER IRON MINING COMPANY,
By (Signed) GEO. D. SWIFTS,
Assistant Secretary.

138 *Plaintiff's Exhibit G*

This indenture, made this first day of October, in the year of our Lord, one thousand nine hundred and two, by and between Morton Denison Hull and Katharine B. Hull, his wife, Eudora Hull Gaylord, formerly Eudora M. Hull, and Edward L. Gaylord, her husband, all of Chicago, Illinois; Marie D. Owsley, formerly Marie M. Boeing, and Frederick D. Owsley, her husband, of Greenwood, Albemarle County, Virginia; Marshall H. Alworth and Nellie Alworth, his wife, of Duluth, Minnesota; and William Edward Boeing, unmarried, and Caroline Marie Boeing, unmarried, as parties of the first part, hereinafter designated as the lessors, and William H. Cole, of Duluth, Minnesota, as party of the second part, hereinafter designated as the lessee,

Witnesseth that the lessors, for and in consideration of the sum of one dollar, and other valuable considerations to them in hand paid by the lessee, the receipt whereof is hereby acknowledged, and in further consideration of the covenants, promises, and conditions hereinafter contained, to be kept and performed by the lessee, do hereby let, lease, and demise unto the lessee, his heirs and assigns, for the term of fifty (50) years from and after the first day of October, 1902, the following described lands situated in the county of St. Louis and State of Minnesota, to wit:

The northwest quarter of the southeast quarter and the northeast quarter of the southwest quarter of section six (6) in township fifty-seven (57) north, of range twenty (20) west, subject to the

existing grants of railroad rights of way, as the same appear of record in the office of the register of deeds of said county;

Said lands are hereby leased by the lessors to the lessee for the purpose of exploring for and mining, taking out and removing therefrom the merchantable iron ore (as well as other mineral as hereinafter provided for) which is or may hereafter be found on, in or under said lands, together with the right to construct all buildings and to make all excavations, openings, ditches, drains, railroads, wagon roads, and all other improvements on said lands and premises, which are or which may become necessary or suitable for the mining or removal of the iron ore therefrom and the carrying on of mining operations thereon.

Provided, however, that the lessee, his heirs and assigns,
139 shall have the right at any time, upon thirty days' notice, to terminate this agreement and lease in so far as it requires the lessee to mine ore on said lands, or to pay royalty therefor, or to pay taxes thereon, by giving written notice in manner as hereinafter provided to the lessors or their legal representatives or their assigns, who shall in such case acknowledge in writing the receipt of such notice, and this lease shall terminate thirty days after the giving of such notice, whether so acknowledged or otherwise. All arrearages and sums, including taxes, which may be due and payable under this lease up to the time of its termination, as set forth in such notice, shall be paid within thirty days after such termination, and the lessee, his heirs and assigns, upon such termination, shall immediately execute and record a formal relinquishment of such lease in the office of the register of deeds of the said county of St. Louis. Such notice of termination may be delivered personally to the lessors or their legal representatives or assigns, or it may be given by registered letters mailed from any post office in the United States, postage prepaid, and addressed to the lessors or their legal representatives or assigns, at their last known respective places of residence.

The lessors hereby further agree that the lessee, his heirs and assigns, shall have the right to assign this lease, or contract with others to work any mine or mines which are now or may hereafter be discovered upon said lands, or subcontract or sublet the same, at his or their option, with the same rights and priveleges as are herein granted to the lessee, it being expressly understood, however, that any such assignment shall not operate as a release or discharge of the lessee from the performance of the conditions of this lease, until and unless the lessors shall specifically consent to said assignment in writing.

Specific consent is hereby given to assign this lease to the Buffalo and Susquehanna Iron Company, its successors and assigns, if the lessee herein desires to do so.

The lessee, for himself, his heirs, and assigns, hereby covenants and agrees to and with the lessors, that the lessee will from and after this date, on or before the tenth days of January, April, July,

and October in each calendar year of the term covered by this lease, or during the period of time for which this contract and lease continues in force, pay to the lessors for all iron ore which shall be mined and removed from said lands during the three calendar months next preceding the first day of the month in which payment
140 is to be made as aforesaid, a royalty at and of twenty-five cents per ton for all iron ore so taken out, mined, and carried away from all said lands and premises, each ton in all cases to be reckoned at 2,240 pounds.

The lessee, for himself, his heirs, and assigns, hereby covenants and agreees with the lessors that from and after this date, during each and every calendar year of the period or term of this lease, or until the surrender or assignment of the same in the manner herein provided, the lessee will mine and remove from said lands (which for all and singular the purposes of this lease shall be inseparable and considered as only one tract or parcel) at least one hundred thousand (100,000) gross tons of iron ore annually, or that he will pay to the lessors an advance royalty, which shall be treated and considered as ground rent, of twenty-five cents per gross ton on said minimum quantity each year, the same as if actually mined and removed, it being the express intention hereof that it shall be optional with the lessee either to mine, remove and ship away iron ore from said lands during each calendar year while this lease continues in force, or in lieu thereof to pay the lessors an advance royalty of twenty-five cents per ton on said annual minimum quantity of one hundred thousand tons, the same as if actually mined and removed.

The said obligation of the lessee to pay said advance royalty of twenty-five cents per ton upon one hundred thousand tons annually, or such ground rent of twenty-five thousand dollars, shall continue in force without regard to the quantity or quality of ore existing in the premises, during the full term of this lease or until the same is terminated and surrendered or assigned in the manner herein provided, and, in case of an assignment of this lease in the manner herein provided, the obligation to mine and pay for such annual minimum quantity of ore, as well as all other provisions of this lease, shall rest upon and bind such assignee as fully as the lease is hereby bound.

If ore is not mined and removed from said lands during any calendar year or years while this lease is in force, said advance royalties (to be considered as ground rent as aforesaid) on said annual minimum of one hundred thousand tons, shall be paid quarterly at the times and in the manner as hereinbefore provided for the payment of royalties for ore actually mined and shipped away; and in case mining operations are carried on and the quantity of iron ore mined and shipped away in any quarter of any calendar year is less
141 than 25,000 tons, advance royalty shall be paid in such sums as shall, together with the amount actually paid as royalties, equal sixty-two hundred and fifty dollars ($6,250), and such sums or amounts paid as advance royalties shall be credited in the pay-

ment of the quarterly royalty for any other quarter or quarters of said year when more than 25,000 gross tons are mined and shipped away, such credit to apply only on the excess of the minimum quantity required to be mined and shipped or paid for during such quarter; and in case more than 25,000 gross tons are mined and shipped away in any quarter of any calendar year, upon which royalties shall be paid as hereinbefore provided, the amount of such payment in excess of $6,250.00 shall be likewise credited in the payment of the quarterly minimum royalty for any other quarter or quarters of such year when less than 25,000 tons is mined and shipped away; it being the express intention hereof that the lessee shall not be required in and for any such calendar year to pay a greater aggregate royalty than $25,000, except and unless a greater quantity than 100,000 gross tons is mined and shipped away in such entire year; and that for all advance royalties and ground rent which shall be paid in any such calendar year and for which ore shall not have been mined and shipped away, the lessee shall have the right, without further payment of royalty and free of charge, to mine and ship away ore in the manner as provided in the next succeeding paragraph hereof, that is to say:

If for any year or years of the life of this contract said lessee shall thus pay moneys, either as advance royalties or ground rent, in excess of the royalty on ore actually mined and removed from said lands during such year or years, then such moneys so paid in excess of the royalty on ore actually mined and removed, shall be credited and applied as payments of royalties on ore which may be mined and removed from said lands or any thereof, during any subsequent year or years, in excess of the stipulated minimum quantity of 100,000 tons.

Provided, however, that during the first year of the life of this contract, the foregoing provisions of this contract shall be modified in this, that the minimum annual output required during said first year shall be fifty thousand (50,000) gross tons instead of one hundred thousand gross tons, and the minimum royalty or ground rent required to be paid during said first year shall be twelve thou-
sand five hundred dollars ($12,500) instead of twenty-five
142 thousand dollars, making the minimum quarterly payments
to be made during said first year thirty-one hundred and twenty-five dollars ($3125) instead of sixty-two hundred and fifty dollars.

The lessee, his heirs and assigns, at the time of making each of said payments, shall transmit to the lessors, their successors and assigns, an exact truthful statement of the amount of iron ore removed from said lands for the three calendar months for which payment is to be made. The iron ore so taken out by the lessee, his heirs and assigns, from said lands shall be weighed by the railroad company transporting the same therefrom, which weights shall determine the quantity as between the parties hereto prima facie.

The lessee, his heirs and assigns, shall furnish the lessors monthly statements showing the aforesaid weights; the right is, however, hereby conceded to and reserved by the lessors, by their duly authorized agents, to inspect, view, and test the correctness of the railroad company's weights at any time and in such manner as may seem proper to adopt, it being understood that any errors in these respects when ascertained are to be cognizable and corrected and any such differences shall be settled and paid for at the next regular quarterly payment.

The lessee hereby covenants and agrees to conduct all his mining operations on said lands in a good, workmanlike manner and in accordance with the requirements of good engineering and so as not to do or cause or permit any unnecessary or unusual permanent injury to the same or inconvenience or hindrance in the subsequent operation of the mine or mines thereon.

The lessee shall pay all taxes and assessments, ordinary and extraordinary, general and specific, which may be levied or assessed upon the lands hereby demised and on the iron ore mined thereon, and on all improvements and personal property thereon while this lease is in force, and shall furnish the lessors with duplicate tax receipts showing the payment of any such assessments or taxes; provided, however, the lessee shall have the right to contest in the counts or otherwise, the validity of any such taxes or assessments in case he shall deem the same unjust, unequal or excessive, or to take such other steps or proceedings as he may deem necessary to compel or secure a reduction, re-adjustment or equalization thereof, before he shall be required hereunder to pay and discharge the same or
143 any part thereof, and at the termination of this lease, or in case the same is surrendered in manner hereinbefore provided, the lessee hereby agrees peaceably to surrender possession of said lands to the lessors.

The lessee further hereby covenants and agrees that, while this lease is in force and until it is surrendered or assigned in manner as herein provided, he will protect said lands and premises from all mechanics or labor liens and keep the title to the same free and clear of all clouds or incumbrances arising therefrom in any way on account of his mining operations thereon, or the use and occupation thereof by him, his agents, servants or employees, or his contractors.

The lessors hereby expressly covenant and represent that the said leased lands are now owned in fee by them in the following proportions, to wit:

Morton Denison Hull, an undivided one-sixth interest therein; Eudora Hull Gaylord, an undivided one-sixth interest therein; Marshall H. Alworth, an undivided one-third interest therein; William Edward Boeing and Caroline Marie Boeing, each an undivided one-twelfth thereof; and Marie M. Owsley an undivided one-sixth thereof, and the said lessors above named each for themselves but not for the others hereby covenant to and with the said lessee that

they are well seized in fee of the interests above specified in the lands and premises aforesaid, and have good right to demise and lease the same in manner and form aforesaid, that the same are free from all encumbrances, except such grants of railroad rights of way as appear of record in said county, and the above leased and demised premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, the terms and conditions of this lease being duly kept and performed against all persons lawfully claiming or to claim the whole or any part thereof, the said lessors will warrant and defend, except as to the encumbrances of said rights of way above mentioned and except as to taxes subsequent to the taxes of the year 1901, and except as to charges, claims, or incumbrances arising by reason of the acts or neglect of the lessee, his heirs or assigns, subsequent to the execution of this lease.

The several payments required hereunder to be made shall be made at the Corn Exchange National Bank, of Chicago, Illinois, or at any other bank in the city of Chicago, or elsewhere, as the lessors or their legal representatives or assigns may from time to time
144 in writing designate, and the bank or banks so designated shall be considered and treated as the agent or agents of the lessors, respectively, for the purpose of receiving, collecting, and receipting for such payments. The payments provided in this lease to be made by the lessee shall be made in gold coin of the United States of the present standard or its equivalent.

It is mutually understood and agreed that upon the termination of this lease, whether by the acts of the parties or either of them, or by expiration of the terms, the lessee, his heirs or assigns, shall have sixty days in which to remove all engines, tools, machinery, railroad tracks, or structures erected or placed by it or them upon said premises, provided that all taxes, royalties, or other dues have been paid and other conditions performed, but he or they shall not remove or impair any supports placed in the mine or mines nor any timber or frame work necessary to the use and maintenance of shafts or the approaches to the mine or mines, or the tramways within the same, and on failure within the time above specified to so remove such property, all of the same shall belong to and become the property of the lessors or their successors in interest.

The lessors expressly reserve to themselves (and the lessee hereby assents thereto) the right, by their duly authorized agents, to enter into or upon said leased lands, mines, and premises at any time or times, to inspect and survey the same, and to measure the quantity of ore which shall have been mined and removed therefrom, not unnecessarily or unreasonably hindering or interrupting the operations of the lessee.

This lease is upon the express condition that if such royalty or any part thereof, be and remain unpaid ofter the days and times above specified, and if the same remain in default for a period of sixty days, or in case the lessee fails to keep any of the covenants or conditions herein expressed to be kept and performed by him, and

which failure shall continue for sixty days after receiving written notice from the lessors specifying the default, neglect, or failure complained of, then and from thenceforth and in either of these events, but not otherwise, it shall be lawful for the lessors at their option to take possession of said leased lands with or without any previous process whatever, to re-enter and have and possess the same again as fully as if no lease had been given to the lessee, and he and all parties claiming under him shall be wholly excluded therefrom, and the lessors hereby reserve and shall at all times
145 have, possess, and hold a lien upon all ore mined and upon all improvements made upon said lands and premises by the lessee for unpaid balances hereunder.

In case other ores and minerals are discovered and mined on said lands by the lessee, he being hereby expressly granted the right to mine and remove the same, the royalty thereon shall be thirty-three (33) per centum of the market value or selling price of all such ores or minerals at the market or markets therefor, less all transportation charges which shall first be deducted from such market value or selling price and retailed by the lessee, and such royalty shall be due and payable at the same times and in the same manner that the royalty on the iron ore shall be due and payable, and quarterly reports of the quality, grade, kind, and quantity of such ores and minerals shall be made at the same times and in the same manner that the iron ore reports are required to be made hereunder.

The covenants, terms, and conditions of this lease shall run with the land and be in all respects binding and operative upon the parties hereto and their respective heirs, legal representatives, and assigns.

In witness whereof the parties have hereunto set their hands and seals the day and year first above written.

(Signed) MORTON DENISON HULL. [SEAL.]
(Signed) KATHERINE B. HULL. [SEAL.]

Signed, sealed, and delivered in presence of—

(Signed) JOHN A. VERHOEVEN,
(Signed) RICHARD E. DOOLEY,
As to Morton Denison Hull and wife.

(Signed) EUDORA HULL GAYLORD. [SEAL.]
(Signed) EDWARD L. GAYLORD. [SEAL.]
(Signed) JOHN A. VERHOEVEN,
(Signed) RICHARD E. DOOLEY,
As to Eudora H. Gaylord and husband.

(Signed) MARIE M. OWSLEY. [SEAL.]
(Signed) FREDERIC D. OWSLEY. [SEAL.]
(Signed) W. E. BOEING,
(Signed) E. W. ORTMANN,
As to Marie M. Owsley and husband.

146 (Signed) MARSHALL H. ALWORTH. [SEAL.]
(Signed) NELLIE ALWORTH. [SEAL.]
(Signed) W. D. BAILEY,
(Signed) R. P. SHANNON,
As to Marshall H. Alworth and wife.
(Signed) WILLIAM E. BOEING. [SEAL.]
(Signed) F. W. HEIMICK,
(Signed) F. A. SCHULTE,
As to William Edward Boeing.
(Signed) CAROLINE M. BOEING. [SEAL.]
(Signed) W. E. BOEING,
(Signed) E. W. ORTMANN,
As to Caroline Marie Boeing.
(Signed) WILLIAM H. COLE. [SEAL.]
(Signed) R. P. SHANNON,
(Signed) L. I. FELTHAM,
As to William H. Cole.

147 STATE OF ILLINOIS,
County of Cook, ss:

On this 20th day of October, 1902, before me, a notary public within and for said county, personally appeared Morton Denison Hull and Katharine B. Hull, his wife, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) JOHN A. VERHOEVEN,
Notary Public, Cook County, Illinois.

STATE OF ILLINOIS,
County of Cook, ss:

On this 20th day of October, 1902, before me, a notary public within and for said county, personally appeared Eudora Hull Gaylord and Edward L. Gaylord, her husband, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) JOHN A. VERHOEVEN,
Notary Public, Cook County, Ill.

STATE OF MINNESOTA,
County of St. Louis, ss:

On this 24th day of October, 1902, before me, a notary public within and for said county, personally appeared Marshall H. Alworth and Nellie Alworth, his wife, to me well known to be the same persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

(Signed) W. D. BAILEY,
Notary Public, St. Louis County, Minn.

148 STATE OF MINNESOTA,
County of St. Louis, ss:

On this 6th day of October, 1902, before me, a notary public within and for said county, personally appeared William Edward Boeing, to me well known to be the same person who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] (Signed) FRANK W. HEIMICK,
Notary Public, St. Louis Co., Minn.

STATE OF VIRGINIA,
City of Richmond, ss:

On this 15th day of October, 1902, before me, a notary public within and for said county, personally appeared Caroline Marie Boeing, Marie M. Owsley, and Frederick W. Owsley, her husband, to me well known to be the same persons who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) JNO. R. JETER, Jr.,
Notary Public for the City of Richmond, Va.

My commissions expire January 3rd, 1903.

STATE OF MINNESOTA,
County of St. Louis, ss:

On this 25th day of October, 1902, before me, a notary public within and for said county, personally appeared William N. Cole, to me well known to be the same person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] (Signed) ROBERT P. SHANNON,
Notary Public St. Louis County, Minn.

149 *Plaintiff's Exhibit H*

This indenture, made this sixth day of December, in the year of our Lord one thousand nine hundred and two, by and between Morton Denison Hull and Katharine B. Hull, his wife, Eudora Hull Gaylord, formerly Eudora M. Hull, and Edward L. Gaylord, her husband, all of Chicago, Illinois; Marie M. Owsley, formerly Marie M. Boeing, and Frederick D. Owsley, her husband of Greenwood, Albemarle County, Virginia; Marshall H. Alworth and Nellie Alworth, his wife, of Duluth, Minnesota, William Edward Boeing, unmarried, and Caroline Marie Boeing, unmarried, as parties of the first part, hereinafter designated as the lessors, and Louis W. Hill, of St. Paul, Minnesota, as party of the second part, hereinafter designated as the lessee,

Witnesseth that the lessors, for and in consideration of the sum of one dollar, and other valuable considerations to them in hand paid by the lessee, the receipt whereof is hereby acknowledged, and in further consideration of the covenants, promises and conditions

hereinafter contained, to be kept and performed by the lessee, do hereby let, lease and demise unto the lessee, his heirs and assigns, for the term of fifty (50) years from and after the first day of January, 1903, the following described lands, situated in the county of St. Louis and State of Minnesota, to wit:

The southeast quarter of the northeast quarter of section eleven (11) and the southwest quarter of the northwest quarter of section twelve (12), in township fifty-seven (57) north, of range twenty-one (21) west, subject to the existing grants of railroad rights of way, as the same appear of record in the office of the register of deeds of said county.

Said lands are hereby leased by the lessors to the lessee for the purpose of exploring for and mining, taking out, and removing therefrom the merchantable iron ore (as well as other minerals as hereinafter provided for), which is or may hereafter be found on, in or under said lands, together with the right to construct all buildings and make all excavations, openings, ditches, drains, railroads, wagon roads, and other improvements on said lands and premises, which are or which may become necessary or suitable for the mining or removal of the iron ore therefrom and the carrying on of mining operations thereon.

150 Provided, however, that the lessee, his heirs and assigns, shall have the right at any time, upon thirty days notice, to terminate this agreement and lease, in so far as it requires the lessee to mine ore upon said lands, or to pay royalty therefor, or to pay taxes thereon, by giving written notice in manner as hereinafter provided to the lessors, or their legal representatives or their assigns, who shall in such case acknowledge in writing the receipt of such notice, and this lease shall terminate thirty days after the giving of such notice, whether so acknowledged or otherwise. All arrearages and sums, including taxes, which may be due and payable under this lease up to the time of its termination, as set forth in such notice, shall be paid within thirty days after such termination, and the lessee, his heirs and assigns, upon such termination, shall immediately execute and record a formal relinquishment of such lease in the office of the register of deeds of said St. Louis County. Such notice of termination may be delivered personally to the lessors or their legal representatives or assigns, or it may be given by registered letters mailed from any post office in the United States, postage prepaid, and addressed to the lessors, or their legal representatives or assigns, at their last known respective places of residence.

The lessors hereby further agree that the lessee, his heirs and assigns, shall have the right to assign this lease, or contract with others to work any mine or mines which are now or hereafter may be discovered upon said lands, or subcontract or sublet the same, at his or their option, with the same rights and privileges as are herein granted to the lessee, it being expressly understood, however,

that any such assignment shall not operate as a release or discharge of the lessee from the performance of the conditions of this lease, until and unless the lessors shall specifically consent to said assignment in writing.

The lessee, for himself, his heirs and assigns, hereby covenants and agrees to and with the lessors, that the lessee will, from and after January 1", 1903, on or before the tenth days of January, April, July, and October in each calendar year of the term covered by this lease, or during the period of time for which this contract and lease continues in force, pay to the lessors for all iron ore which shall be mine, and removed from said lands during the three calendar months next preceding the first day of the month in which payment is to be made as aforesaid, a royalty at and of twenty-five
151 cents per ton for all iron ore so taken out, mined, and carried away from all said lands and premises, each ton in all cases to be reckoned at 2,240 pounds.

The lessee, for himself, his heirs and assigns, hereby covenants and agrees with the lessors that from and after January 1", 1903, during each and every calendar year of the period or term of this lease, or until the surrender or assignment of the same in the manner herein provided, the lessee will mine and remove from said lands (which for all and singular the purposes of this lease shall be inseparable and considered as only one tract or parcel) at least one hundred thousand (100,000) gross tons of iron ore annually or that he will pay to the lessors an advance royalty, which shall be treated and considered as ground rent, of twenty-five cents per gross ton on said minimum quantity each year, the same as if actually mined and removed, it being the express intention hereof that it shall be optional with the lessee, either to mine, remove, and ship away iron ore from said lands during each calendar year while this lease continues in force, or, in lieu thereof, to pay the lessors as advance royalty of twenty-five cents per ton on said annual minimum quantity of one hundred thousand tons, the same as if actually mined and removed.

The said obligation of the lessee to pay said advance royalty of twenty-five cents per ton upon one hundred thousand tons annually, or such ground rent of twenty-five thousand dollars, shall continue in force without regard to the quantity or quality of ore existing in the premises during the full term of this lease or until the same is terminated and surrendered, or assigned in the manner hereinbefore provided, and, in case of an assignment of this lease as herein provided, the obligation to mine and pay for such annual minimum quantity of ore, as well as all other provisions of this lease, shall rest upon and bind such assignee as fully as the lessee is hereby bound.

And, in order that the lessors may enjoy the benefit of quarterly payments of royalty, whatever may be the amount of iron ore mined and removed, or whether mining operations be carried on or not, it is agreed that such minimum royalties or ground rent, amounting to

twenty-five thousand dollars, shall be paid in quarter yearly installments of sixty-two hundred and fifty dollars each, at the times hereinbefore specified for the payment of royalties on ore mined and removed; provided, however, that when any such quarterly payment shall become due, if the ore which shall then have been mined and removed during the same year and for which royalty shall
152 have become payable, as hereinbefore provided, shall equal or exceed the aggregate amount of such minimum royalties for the quarters then elapsed, and not theretofore paid, in such case, the royalty paid for such iron ore mined and removed shall satisfy the foregoing obligation for the quarterly payment of such minimum royalty, it being the express intention hereof that the lessee shall not be required in and for any such calendar year to pay a greater aggregate royalty than twenty-five thousand dollars, except and unless a greater quantity than 100,000 gross tons is mined and shipped away in such entire year.

If for any year or years of the life of this contract said lessee shall thus pay monies, either as advance royalties or ground rent, in excess of the royalty on ore actually mined and removed from said lands during such year or years, then such monies so paid in excess of the royalty on ore actually mined and removed, shall be credited and applied as payments of royalties on ore which may be mined and removed from said lands, or any thereof, during any subsequent year or years, in excess of the stipulated minimum quantity of one hundred thousand tons.

Provided, however, that during the first year of the life of this contract, the foregoing provisions of this contract shall be modified in this: That the minimum annual output required during said first year shall be fifty thousand (50,000) gross tons instead of one hundred thousand gross tons, and the minimum royalty or ground rent required to be paid during said first year shall be twelve thousand five hundred dollars ($12,500), instead of twenty-five thousand dollars, making the minimum quarter payments to be made during said first year thirty-one hundred and twenty-five dollars, instead of sixty-two hundred and fifty dollars.

The lessee, his heirs and assigns, at the time of making each of said payments, shall transmit to the lessors, their successors and assigns, an exact truthful statement of the amount of iron ore removed from said lands for the three calendar months for which payment is to be made. The iron ore so taken out by the les'ee, his heirs and assigns, from said lands, shall be weighed by the railroad company transporting the same therefrom, which weights shall determine the quantity as between the parties hereto prima facie.

The lessee, his heirs and assigns, shall furnish the lessors monthly statements showing the aforesaid weights; the right is however hereby conceded to and reserved by the lessors, by their duly
153 authorized agents, to inspect, view, and test the correctness of the railroad company's weights at any time and in such manner as may seem propert to adopt, it being understood that any errors

in these respects, when ascertained, are to be cognizable and corrected and any such differences shall be settled and paid for at the next regular quarterly payment.

The lessee hereby covenants and agrees to conduct all his mining operations on said lands in a good, workmanlike manner and in accordance with the requirements of good engineering and so as not to do or cause or permit any unnecessary or unusual permanent injury to the same or inconvenience or hindrance in the subsequent operation of the mine or mines thereon.

The lessee shall pay all taxes and assessments, ordinary and extraordinary, general and specific, which may be levied or assessed upon the lands hereby demised and on the iron ore mined thereon, and on all improvements and personal property thereon while this lease is in force, and shall furnish the lessors with duplicate tax receipts showing the payment of any such assessments or taxes; provided, however, that the lessee shall have the right to contest, in the courts or otherwise, the validity of any such taxes or assessments, in case he shall deem the same unjust, unequal, or excessive, or to take such other steps or proceedings as he may deem necessary to compel or secure a reduction, readjustment, or equalization thereof, before he shall be required hereunder to pay and discharge the same or any part thereof, and at the termination of this lease, or in case the same is surrendered in manner hereinbefore provided, the lessee hereby agrees peaceably to surrender possession of said lands to the lessors.

The lessee further hereby covenants and agrees that, while this lease is in force and until it is surrendered or assigned in manner as herein provided, he will protect said lands and premises from all mechanics' or labor liens and keep the title to the same free and clear of all clouds or incumbrances arising therefrom in any way on account of his mining operation thereon, or the use and occupation thereof by him, his agents, servants or employees, or his contractors.

The lessors hereby expressly covenant and represent that the said leased lands are now owned in fee by them in the following proportions, to wit:

Morton Denison Hull, and undivided one-sixth interest therein;

Eudora Hull Gaylord, an undivided one-sixth interest therein;

154 Marshall H. Alworth, an undivided one-third interest therein;

William Edward Boeing and Caroline Marie Boeing, each an undivided one-twelfth thereof; and Marie M. Owsley, an undivided one-sixth thereof; and the said lessors above named, each for themselves, but not for the others, hereby covenant to and with the said lessee that they are well seized in fee of the interests above specified in the lands and premises aforesaid, and have good right to demise and lease the same in manner and form aforesaid; that the same are free from all incumbrances, except such grants of railroad rights of way as appear of record in said county, and the above leased and demised premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, the terms and conditions of

this lease being duly kept and performed, against all persons lawfully claiming or to claim the whole or any part thereof, the said lessors will warrant and defend, except as to the incumbrances of said rights of way above mentioned, and except as to taxes subsequent to the taxes of the year 1902, and except as to charges, claims, or incumbrances arising by reason of the acts or neglect of the lessee, his heirs, or assigns, subsequent to the execution of this lease.

The several payments required hereunder to be made shall be made at the Corn Exchange National Bank of Chicago, Illinois, or at such other bank in the city of Chicago, or elsewhere, as the lessors or their legal representatives or assigns may from time to time in writing designate, and the bank or banks so designated shall be considered and treated as the agent or agents of the lessors, respectively, for the purpose of receiving, collecting, and receipting for such payments. The payments provided in this lease to be made by the lessee, shall be made in gold coin of the United States of the present standard, or its equivalent.

It is mutually understood and agreed that upon the termination of this lease, whether by the acts of the parties, or either of them, or by expiration of the term, the lessee, his heirs, or assigns, shall have sixty days in which to remove all engines, tools, machinery, railroad trucks, or structures erected or placed by him or them upon said premises, provided that all taxes, royalties, or other dues have been paid and other conditions performed, but he or they shall not remove or impair any supports placed in the mine or mines, nor any timber or frame work necessary to the use and maintenance of shafts or the approaches to the mine or mines, or the tramways within the same, and on failure within the time above specified to so
155 remove such property, all of the same shall belong to and become the property of the lessors, or their successors in interest.

The lessors expressly reserve to themselves (and the lessee hereby assents thereto) the right by their duly authorized agents to enter into or upon said leased lands, mines, and premises, at any time or times, to inspect and survey the same, and to measure the quantity of ore which shall have been mined and removed therefrom, not unnecessarily or unreasonably hindering or interrupting the operations of the lessee.

This lease is upon the express condition that if such royalty, or any part thereof, be and remain unpaid after the days and time above specified, and if the same remain in default for a period of sixty days, or in case the lessee fails to keep any of the covenants or conditions herein expressed to be kept and performed by him, and which failure shall continue for sixty days after receiving written notice from the lessors specifying the default, neglect, or failure complained of, then and from thenceforth and in either of these events, but not otherwise, it shall be lawful for the lessors at their option to take possession of said leased lands, with or without any previous process whatever, to reenter and have and possess the same again as fully as if no lease

had been given to the lessee and he and all parties claiming under him be wholly excluded therefrom, and the lessors hereby reserve and shall at all times have, possess, and hold a lien upon all ore mined and upon all improvements made upon said lands and premises by the lessee for unpaid balances hereunder.

In case other ores and minerals are discovered and mined on said lands by the lessee (he being expressly hereby granted the right to mine and remove the same) the royalty thereon shall be thirty-three per centum of the market value or selling price of all such ores or minerals at the market or markets therefor, less all transportation charges, which shall first be deducted from such market value or selling price and retained by the lessee, and such royalty shall be due and payable at the same times and in the same manner that the royalty on the iron ore shall be due and payable, and quarterly reports of the quality, grade, kind, and quantity of such ores and minerals shall be made at the same times and in the same manner that the iron ore reports are required to be made hereunder.

The covenants, terms, and conditions of this lease shall run
156 with the land and be in all respects binding and operative upon the parties hereto, their respective heirs, legal representatives, and assigns.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered in presence of—

(Signed) MORTON DENISON HULL. [SEAL.]
(Signed) KATHARINE B. HULL. [SEAL.]
(Signed) RICHARD E. DOOLEY,
(Signed) JOHN A. VERHOEVEN,
As to Morton Denison Hull and wife.

(Signed) EUDORA HULL GAYLORD. [SEAL.]
(Signed) EDWARD L. GAYLORD. [SEAL.]
(Signed) RICHARD E. DOOLEY,
(Signed) JOHN A. VERHOEVEN,
As to Eudora Hull Gaylord and husband.

(Signed) MARIE M. OWSLEY. [SEAL.]
(Signed) FREDERICK D. OWSLEY. [SEAL.]
(Signed) MARY S. CHASE,
(Signed) HANNAH NICHOLSON,
As to Marie M. Owsley & husband.

(Signed) MARSHALL H. ALSWORTH. [SEAL.]
(Signed) NELLIE ALWORTH. [SEAL.]
(Signed) F. W. HEIMICK,
(Signed) E. C. SMITH,
As to Marshall H. Alworth and wife.

(Signed) WILLIAM EDWARD BOEING. [SEAL.]
(Signed) MARY S. CHASE,
(Signed) HANNAH NICHOLSON,
As to William Edward Boeing.

(Signed) CAROLINE MARIE BOEING. [SEAL.]
(Signed) MARY S. CHASE,
(Signed) HANNAH NICHOLSON,
As to Caroline Marie Boeing.
(Signed) LOUIS W. HILL. [SEAL.]
(Signed) H. H. PARKHOUSE,
(Signed) F. A. PEIL,
As to Louis W. Hill.

157 STATE OF ILLINOIS,
County of Cook, ss:
On this 13th day of December, 1902, before me, a notary public within and for said county, personally appeared Morton Denison Hull and Katharine B. Hull, his wife, to me well known to be the the same persons described in and who executed the foregoing ment, and they acknowledged that they executed the same as their free act and deed.
[NOTARIAL SEAL.] (Signed) JOHN A. VERHOEVEN,
Notary Public, Cook Co., Ill.

STATE OF ILLINOIS,
County of Cook, ss:
On this 13th day of December, 1902, before me, a notary public within and for said county, personally appeared Marshall H. Alworth lord and Edward L. Gaylord, her husband, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.
[NOTARIAL SEAL.] (Signed) JOHN A. VERHOEVEN,
Notary Public, Cook Co., Ill.

STATE OF VIRGINIA,
County of Albemarle, ss:
On this 20th day of December, 1902, before me, a notary public within and for said county, personally appeared Marie M. Owsley and Frederick D. Owsley, her husband, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.
[NOTARIAL SEAL.] (Signed) W. L. WALLACE,
Notary Public, Albemarle Co., Va.

158 STATE OF MINNESOTA,
County of St. Louis, ss:
On this 23rd day of December, 1902, before me, a notary public within and for said county, personally appeared Marshall H. Alworth and Nellie Alworth, his wife, to me well known to be the same per-

sons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) FRANK W. HEIMICK,
Notary Public, St. Louis Co., Minn.

STATE OF VIRGINIA,
County of Albemarle, ss:

On this 20th day of December, 1902, before me, a notary public within and for said county, personally appeared William Edward Boeing, unmarried, to me well known to be the same person described in and who executed the foregoing instrument, and he acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] (Signed) W. L. WALLACE,
Notary Public, of Virginia Co., Albemarle.

STATE OF VIRGINIA,
County of Albemarle, ss:

On this 20th day of December, 1902, before me, a notary public within and for said county, personally appeared Caroline Marie Boeing, unmarried, to me well known to be the same person described in and who executed the foregoing instrument, and she acknowledged that she executed the same as her free act and deed.

[NOTARIAL SEAL.] (Signed) W. L. WALLACE,
Notary Public, of Virginia Co., Albemarle.

159 STATE OF MINNESOTA,
County of Ramsey, ss:

On this 9th day of January, 1903, before me, a notary public within and for said county, personally appeared Louis W. Hill, to me well known to be the same person described in and who executed the foregoing instrument, and he acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] (Signed) C. C. MCELWEE,
Notary Public, Ramsey Co., Minn.

160 *Plaintiff's Exhibit I*

This indenture, made this first day of October, in the year of our Lord one thousand nine hundred and three (1903), by and between Marshall H. Alworth and Nellie Alworth, his wife, of Duluth, Minnesota; Morton Dension Hull and Katharine S. Hull, his wife, Eudora Hull Gaylord, formerly Eudora M. Hull, and Edward L. Gaylord, her husband, all of Chicago, Illinois; Marie M. Owsley, formerly Marie M. Boeing, and Frederick D. Owsley, her husband, William Edward Boeing, unmarried, and Caroline Marie Boeing, unmarried, all of Albemarle County, Virginia, parties of the first part, hereinafter designated as the lessors, and Russell M. Bennett, of

Minneapolis, and E. J. Longyear, of Hibbing, Minnesota, parties of the second part, hereinafter designated as the lessees,

Witnesseth that the lessors, for and in consideration of the sum of one dollar, and other valuable considerations to them in hand paid by the lessees, the receipt whereof is hereby acknowledged, and in further consideration of the convenants, promises, and conditions hereinafter contained, to be kept and performed by the lessees, do hereby let, lease and demise unto the lessees, their heirs and assigns, for a term of twenty-five (25) years from and after the date of this instrument, the following-described land situated in the county of St. Louis and State of Minnesota, to wit:

The southwest quarter of the southeast quarter and the southeast quarter of the southwest quarter of section six (6) in township fifty-seven (57) north, of range twenty (20) west of the fourth principal meridian.

Said lands are hereby leased by the lessors to the lessees for the purpose of exploring for and mining, taking out, and removing therefrom the merchantable iron ore (as well as other minerals, as hereinafter provided for), which is or which may hereafter be found on, in or under said lands, together with the right to construct all buildings and to make all excavations, openings, ditches, drains, railroads, wagon roads, and all other improvements upon said lands and premises, which are or may become necessary or suitable for the mining or removing of the iron ore therefrom, and the carrying on of mining operations thereon, and together with the right, during the continuance of this lease, to cut and use all of the timber, other
161 than pine timber, which may be found up said lands, free and without charge, so far as may be necessary for fuel and in the construction of buildings required in the operation of any mine or mines upon said lands, and for drains, tramways, supports, or shafts of or within any such mines or mines, or in connecting the same with any line or lines of railroad over or upon which said ore may be transported.

Provided, however, that the lessees, their heirs or assigns, shall have the right at any time upon thirty days' notice to terminate this agreement and lease, in so far as it requires the lessees to mine ore on said lands or to pay royalty therefor, or to pay taxes thereon, by giving written notice in manner as hereinafter provided, to the lessors or their legal representatives or their assigns, who shall, in such case, acknowledge in writing the receipt of such notice, and this lease shall terminate thirty days after the giving of such notice, whether so acknowledged or otherwise. All arrearages and sums, including taxes, which may be due and payable under this lease up to the time of its termination, as set forth in such notice, shall be paid within thirty days after such termination, and the lessees, their heirs and assigns, upon such termination, shall immediately execute and record formal relinquishment of such lease in the office of the register of deeds of the county of St. Louis. Such notice of termination may be delivered personally to the lessors, their legal repre-

sentatives or assigns, or it may be given by registered letters mailed from any postoffice in the United States, postage prepaid, and addressed to the lessors or their legal representatives, or their assigns, at their last known respective places of residence.

The lessors hereby further agree that the lessees, their heirs and assigns, shall have the right to assign this lease, or contract with others to work any mine or mines which are now or may hereafter be discovered upon said lands, or subcontract or sublet the same, at their option, with the same rights and privileges as are hereby granted to the lessees, it being expressly understood, however, that any such assignment shall not operate as a release or discharge of the lessees from the performance of the conditions of this lease, until and unless the lessors shall specifically consent to said assignment in writing.

The lessees, for themselves, their heirs and assigns, hereby covenant and agree to and with the lessors that the lessees will from and after the first day of October, 1903, and on or before the
162 tenth days of January, April, July, and October in each calendar year covered by the terms of this lease, or during the period of time for which this contract and lease continues in force, pay to the lessors for all iron ore which shall be mined and removed from said lands during the three calendar months next preceding the first day of the month in which payment is to be made as aforesaid a royalty at and of twenty-five cents per ton for all iron ore so taken out, mined, and carried away from said lands and premises, each ton in all cases to be reckoned at 2,240 pounds.

The lessees, for themselves, their heirs and assigns, hereby covenant and agree, to and with the lessors, that from and after the date of this lease, during each and every calendar year for the period or term of this lease, or until the surrender or assignment of the same, in the manner herein provided, the lessees will mine and remove from the said lands (which for all and singular the purposes of this lease shall be inseparable and considered as one tract or parcel) at least seventy-five thousand (75,000) gross tons of iron ore annually, or that they will pay to the lessors an advance royalty, which shall be treated and considered as ground rent, of twenty-five cents per gross ton on such minimum quantity each year, the same as if actually mined and removed, except that for the first two years of this lease, the minimum amount agreed to be mined or paid for whether mined or not, shall be fifty thousand (50,000) gross tons annually, it being the express intention hereof that it shall be optional with the lessees either to mine, remove and ship away iron ore from said premises during each calendar year while this lease continues in force, or in lieu thereof, to pay the lessors an advance royalty of twenty-five cents per ton on said annual minimum quantity above specified, the same as if actually mined and removed. The said obligation of the lessees to pay said advance royalties of twenty-five cents (25 cents) per ton upon fifty thousand tons annually for the first two years of this

lease, and upon seventy-five thousand tons annually for the remainder of the period thereof, or such ground rent equivalent to twenty-five cents per ton upon said minimum annual quantities, shall continue in force without regard to the quantity or quality of ore existing in the premises, during the full term of this lease, or until the same is terminated and surrendered or assigned in the manner herein provided, and in case of assignment of this lease in the manner herein provided, the obligation to mine and pay for such minimum
163 annual quantities of ore, as well as all other provisions of this lease, shall rest upon and bind such assignee as fully as the lessees are hereby bound.

The said ground rent or advance royalties herein agreed to be paid shall become due and be paid quarterly, at the times and in the manner as hereinbefore provided for the payment for ore actually mined and shipped away; provided, however, that if in any one or more years, or in any quarter or quarters of any year or years, more ore is thus paid for than is actually mined and removed in such year or years or in any quarter or quarters of such year or years, then and in such case the iron ore so paid for and not removed may be removed in any subsequent year or years, or in any subsequent quarter or quarters of such year or years, during the continuance of this lease, without other payment therefor, but such ore so permitted to be removed in any subsequent quarter or quarters of any such year must be in excess of the aggregate minimum amount agreed herein to be mined and removed or paid for during all of the quarters of such year, which shall have, at the time of such payment, expired, and the ore so permitted to be removed in any subsequent year, in consideration of such pre-payment, must be in excess of the stipulated amount agreed to be mined and removed and paid for, whether mined or not, during such year; it being the intention hereof that the lessee shall not be required to make pre-payment as advance royalties or ground rent, for any greater quantity of iron ore during any year of this lease, than fifty thousand tons annually during the first two years thereof and seventy-five thousand tons annually thereafter, unless a greater quantity than said amount is actually mined and removed from said premises.

The lessees, their heirs and assigns, at the time of making each of said payments, shall transmit to the lessors, their legal representatives or assigns, an exact truthful statement of the amount of iron ore removed from said lands for the three calendar months for which such payment is to be made. The iron ore so taken out by the lessees, their heirs and assigns, from said lands shall be weighed by the railroad company transporting the same therefrom, which weights shall determine the quantity as between the parties hereto prima facie.

The lessees, their heirs and assigns, shall furnish to the lessors, monthly statements showing the aforesaid weights. The right, however, is hereby conceded to and reserved by the lessors, by their duly

authorized agents, to inspect, view, and test the correctness of
164 the railroad company's weights at any time and in such manner as may seem proper to adopt, it being understood that any errors in these respects, when ascertained, are to be cognizable and corrected, and any such differences shall be settled and paid for at the next regular quarterly payment.

The lessees hereby covenant and agree to conduct all their mining operations on said lands in a good, workmanlike manner and in accordance with the requirements of good engineering and so as not to be or cause or permit any unnecessary or unusual permanent injury to the same on inconvenience or hindrance in the subsequent operation of the mine or mines thereon.

The lessees shall pay all taxes and assessments, ordinary and extraordinary, general and specific, which may be levied or assessed upon the lands demised hereby and on the iron ore mined thereon, and on all improvements and personal property thereon, while this lease is in force, and shall furnish the lessors with duplicate tax receipts showing the payment of any such assessments or taxes; provided however, that the lessees shall have the right to contest, in the courts or otherwise, the validity of any such taxes or assessments, in case it shall deem the same unjust, unequal, or excessive, or to take such other steps or proceedings as they may deem necessary to compel or secure a reduction, re-adjustment or equalization thereof, before he shall be required hereunder to pay or discharge the same, or any part thereof, and at the termination of this lease, or in case the same is surrendered in manner as hereinbefore provided, the lessees further hereby agree peaceably to surrender possession of said lands to the lessors.

The lessees further hereby covenant and agree that, while this lease is in force and until it is surrendered and assigned, in manner as herein provided, they will protect said lands and premises from all mechanics' liens or labor liens and keep the title to the same free and clear of all clouds and encumbrances arising therefrom in any way on account of their mining operations thereon, or the use and occupation thereof by them, their agents, servants or employees, or their contractors.

The lessors hereby expressly covenant and represent that the said leased lands are now owned in fee by them in the following proportions, to wit: Marshall H. Alworth, an undivided one-third interest thereof; Morton Denison Hull, an undivided one-sixth thereof;
Eudora Hull Gaylord, an undivided one-sixth thereof; Marie
165 M. Owsley, an undivided one-sixth interest thereof; William Edward Boeing, an undivided one-twelfth interest thereof; and Caroline Marie Boeing, an undivided one-twelfth interest thereof.

The several payments required hereunder to be made shall be made at the Corn Exchange National Bank, of Chicago, Illinois, or at any other bank in the city of Chicago, or elsewhere, as the lessors, or their legal representatives or assigns, may from time to time in

writing designate, and the bank or banks so designated shall be considered and treated as the agent or agents of the lessors, respectively, for the purpose of receiving, collecting, and receipting for such payments. The payments provided in this lease to be made by the lessees shall be made in gold coin of the United States of the present standard or its equivalent.

It is mutually understood and agreed that upon the termination of this lease, whether by the acts of the parties or either of them, or by expiration of the term, the lessees, their heirs and assigns, shall have sixty days in which to remove all engines, tools, machinery, railroad tracks, or structures erected or placed by them upon said premises, provided that all taxes, royalties, or other dues have been paid and other conditions performed, but he or they shall not remove or impair any supports placed in the mine or mines, or any timber or framework necessary to the use or maintenance of the shafts or approaches to the mine or mines or the tramways within the same, and on failure within the time above specified to so remove such property all of the same shall belong to and become the property of the lessors or their successors in interest.

The lessors expressly reserve to themselves (and the lessees hereby assent thereto) the right, by their duly authorized agents, to enter into or upon said leased lands, mines, and premises at any time or times, to inspect or survey the same, and to measure the quantity of ore that shall have been mined or removed therefrom, not unnecessarily or unreasonably hindering or interrupting the operations of the lessees.

This lease is upon the express condition that if such royalty, or any part thereof, be and remain unpaid after the days and times above specified and if the same remain in default for a period of sixty days, or in case the lessees fail to keep any of the covenants or conditions herein expressed to be kept and performed by them, and such failure shall continue for sixty days after receiving written notice from the lessors specifying the default, neglect, or failure com-
166 plained of, then and from thenceforth and in either of those events, but not otherwise, it shall be lawful for the lessors, at their option, to take possession of said leased lands, with or without any previous process whatever, and to re-enter and have and possess the same again as fully as if no lease had been given to the lessees, and they and all parties claiming under them shall be wholly excluded therefrom, and the lessors hereby reserve and shall at all times have, possess, and hold a lien upon all iron ore mined and upon all improvements made upon said lands and premises by the lessees for unpaid balances hereunder.

In case other ores or minerals are discovered or mined said lands by the lessees, they being hereby expressly granted the right to mine and remove the same, the royalty thereon shall be thirty-three per centum of the market value or selling price of all such ores or minerals at the market or markets therefor, less all transportation

charges which shall first be deducted from such market value or selling price and retained by the lessees, and such royalty to be due and payable at the same times and in the same manner that the royalty on the iron ore shall be due and payable, and quarterly reports of the quality, grade, and quantity of such ores and minerals shall be made at the same times and in the same manner that the iron ore reports are required to be made hereunder.

The covenants, terms, and conditions of this lease shall run with the land and be in all respects binding and operative upon the heirs, legal representatives, and assigns of both parties hereto.

In testimony whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered in presence of—

(Signed) MARSHALL H. ALWORTH. [SEAL.]
(Signed) NELLIE ALWORTH. [SEAL.]
(Signed) FRANK W. HEIMICK,
(Signed) JESSIE E. McKAY,
As to Marshall H. Alworth & wife.

167 (Signed) MORTON DENISON HULL. [SEAL.]
(Signed) KATHARINE B. HULL. [SEAL.]
(Signed) EUDORA HULL GAYLORD. [SEAL.]
(Signed) EDWARD L. GAYLORD. [SEAL.]
(Signed) JOHN A. VERHOEVEN,
(Signed) FANNIE H. FOGG,
As to Morton Denison Hull and wife and Eudora H. Gaylord and husband.
(Signed) MARIE M. OWSLEY. [SEAL.]
(Signed) FREDERICK D. OWSLEY. [SEAL.]
(Signed) WILLIAM EDWARD BOEING. [SEAL.]
(Signed) CAROLINE M. BOEING. [SEAL.]
By (Signed) MARIE M. OWSLEY, [SEAL.]
Her Attorney in Fact.
(Signed) HANNAH NICHOLSON,
(Signed) CAROLINE M. MEYER,
As to Marie M. Owsley & husband, William Edward Boeing, and Marie M. Owsley as attorney in fact.
(Signed) RUSSELL M. BENNETT. [SEAL.]
(Signed) E. J. LONGYEAR. [SEAL.]

(Signed) FRANK W. HEIMICK.
(Signed) JESSIE M. McKAY.

168 STATE OF MINNESOTA,
County of St. Louis, ss:

On this 3rd day of November, 1903, before me, a notary public within and for said county, personally appeared Marshall H. Al-

worth and Nellie Alworth, his wife, to me well known to be the same persons described in and who executed the same as their free act and deed.

(Signed) FRANK W. HEIMICK,
Notary Public, St. Louis Co., Minn.

STATE OF ILLINOIS,
County of Cook, ss:

On this 29th day of October, 1903, before me, a notary public within and for said county, personally appeared Morton Denison Hull and Katharine B. Hull, his wife, and Eudora Gaylord and Edward L. Gaylord, her husband, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] (Signed) JOHN A. VERHOEVEN,
Notary Public, Cook Co., Ill.

STATE OF VIRGINIA,
County of Albermarle, ss:

On this 23rd day of October, 1903, before me, a notary public within and for said county, personally appeared Marie M. Owsley and Frederick D. Owsley, her husband, and William Edward Boeing, unmarried, to me well known to be the same persons described in and who executed the foregoing instrument, and they acknowledged that they executed the same as their free act and deed; also at the same time and place before me personally appeared Marie M. Owsley as attorney in fact for Caroline Marie Boeing (unmarried), to me known to be the same person described in and who executed the foregoing instrument, and she acknowledged that she executed the same as her own free act and deed as such attorney in fact.

[NOTARIAL SEAL.] (Signed) WM. S. RODES,
Notary Public, Albermarle Co., Va.

My term expires 22nd day Apl., 1907.

169 STATE of MINNESOTA,
County of St. Louis, ss:

On this 3rd day of November, 1903, before me, a notary public within and for said county, personally appeared Russell M. Bennett, to me personally known to be the same person described in and who executed the foregoing instrument, and he acknowledged that he executed the same as his free act and deed.
and who executed the foregoing instrument, and he acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] (Signed) FRANK W. HEIMICK,
Notary Public, St. Louis County, Minn.

STATE of MINNESOTA,
County of St. Louis, ss:

On this 3rd day of November, 1903, before me, a notary public within and for said county, personally appeared E. J. Longyear, to

me well known to be the same person described in and who executed the foregoing instrument, and he acknowledged that he executed the same as his free act and deed.

[NOTARIAL SEAL.] (Signed) FRANK W. HEIMICK,
Notary Public, St. Louis Co., Minn.

170 MINNEAPOLIS, MINN., *July, 24th, 1905.*

#8

To MARSHALL H. ALWORTH,
MARTIN DENNISON HULL,
EUDORA HULL GAYLORD,
MARIE M. OWSLEY,
WILLIAM EDWARD BOEING, AND
CAROLINE MARIE BOEING:

The undersigned beg to advise you that they have this day assigned to Louis W. Hill, of St. Paul, Minn., the mining lease dated October 1st, 1905, covering the southwest quarter (S. W. ¼) of the southeast quarter (S. E. ¼) and the southeast quarter (S. E. ¼) of the southwest quarter (S. W. ¼) of section six (6) in township fifty-seven (57) north of range twenty (20) west, in St. Louis County, Minnesota. Mr. Hill has accepted said assignment and assumed and agreed to observe and perform all of the obligations of said lease binding upon the undersigned. The assignment also contains the following provisions:

"The second party further covenants and agrees to and with the first parties that he will not surrender said lease, or any right thereunder, or suffer the same to become impaired or forfeited, without first tendering an assignment of said lease to the first parties; and if at any time the second party desires to cease operations under said lease, or to be relieved of the obligations thereof, he will notify said first parties in writing, and upon their written request therefor within thirty (30) days after such notice, will re-assign said lease to them instead of surrendering the same to the lessors, as therein permitted; provided, said first parties shall in said assignment contract agree to save the second party harmless from any future liability under said lease. In case the second party shall assign said lease he shall make such assignment expressly subject to the conditions in this paragraph set forth, and shall embody in said assignment a stipulation requiring the assignee thereafter to do and perform to and for the first parties hereto the acts in this paragraph stipulated to be done and performed by the second parties hereto."

Yours truly,

(Signed) R. M. BENNETT.
(Signed) E. J. LONGYEAR.
Per B.

171 *Plaintiff's Exhibit J*

[Cut.] Treasury Department, Internal Revenue Service

CHICAGO, ILL., *July 13, 1922.*

Office of internal revenue agent Chicago division. Field order No. 31

In re: Eudora Hull Spalding, 2626 Prairie Avenue, Chicago, Ill.

Date of report, July 13, 1922. Years examined, 1917

MADAM: Attached please find copy of report on examination recently made of your income-tax returns by an officer from this office.

Kindly acknowledge receipt of same by signing in the space provided below, and immediately return this entire sheet to the undersigned.

Please retain the carbon copy of report for your files.

Do not mail check until you receive bill from the collector of internal revenue.

Respectfully,

E. E. ALDEN,
Internal Revenue Agent in Charge,
Room 559 Federal Building, Chicago, Illinois.

Receipt is hereby acknowledged of revenue agent's report covering income-tax examination, as above

_____
(Signature)

_____
(Date)

172 JULY 13, 1922.

I. T.
EUDORA HULL SPALDING,
2626 Prairie Avenue, Chicago, Illinois.
Exam. Off., W. W. Elston.

Amended report as to year 1917

	Addl. tax
1917	$35,693.08
1918	77,098.56
1919	20,225.49
Total addl. tax	133,017.13

COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

Attention head, field audit division

Enclosed herewith is an amended report of Internal Revenue Agent William W. Elston, dated July 10, 1922, covering his re-examination of the records of the above-named individual for the

year 1917, indicating a corrected net additional tax due in the sum of $133,017.13, which I recommend be assessed.

This examination made under authority of internal revenue agent in charge. Please amend our report of June 20, 1922, accordingly.

In accordance with field order No. 25, the taxpayer will be furnished with a copy of this report.

Enclosures: Duplicate of letter to taxpayer requesting acknowledgment of receipt of copy of report.

E. E. ALDEN,
Internal Revenue Agent in Charge.

SA

173 Eudora Hull Spalding

Schedule 1—Block adjustments, 1917

Block	Return	Additions	Corrected
M	$30,158.75		$194,291.04
N	4,523.81	$24,619.85	29,143.66
Total			165,147.38

Schedule 1 A.—Explanation of items

N. $4,523.81 incorrect; should be $29,143.66. Represents contributions to the amount of 15% of net income of $194,291.04 before deducting same.

In original report submitted, through an error in copying, this amount was made to read $19,143.66 instead of $29,143.66 and "tax due" was computed accordingly.

Total amount of contributions by taxpayer for 1917, as detailed in original report was $35,667.20; hence the full allowance of 15%.

Schedule 2.—Computation of tax

Total net income		$165,147.38
Less: Exemption	$2,000.00	
Dividends	16,666.39	
Dividends	16,666.39	
		18,566.39
Income subject to normal tax		146,580.99
Tax 2% on $146,580.99	2,931.62	
Tax 2% on $144,580.99	2,891.62	
		5,823.24
Surtax wife's income	30,495.69	
		30,495.69
Total tax		36,318.93
Less tax withheld at source	27.00	27.00
Total tax assessable		36,291.93
Tax previously assessed		598.85
Additional tax to be assessed		35,693.08

174 *Plaintiff's Exhibit K*

TREASURY DEPARTMENT,
WASHINGTON, *March 11th, 1920.*

IR:T:NR
JBL:26403243
Mrs. EUDORA HULL SPALDING,
2626 Prairie Avenue, Chicago, Illinois.

Madam: An examination of the information submitted in connection with your income tax returns for the years 1916 and 1917 has resulted in certain changes.

Your corrected net income for the year 1916 is $205,505.28 and is subject to tax as follows:

Total net income		$205,505.28
Less: Dividends	$15,976.11	
Personal exemption	4,000.00	
Amount subject to normal tax at 2%		185,529.17
Income tax on $185,529.11 at 2%		3,710.58
Less: amount paid at source		128.30
Balance of normal tax		3,582.28
Surtax		9,285.37
Total		12,867.65
Tax previously assessed		131.23
Additional tax due for 1916		12,736.42

175 Your corrected net income for the year 1917 is $193,512.31 and is subject to tax as follows:

Total net income		$193,512.31
Less: Dividends	$15,572.64	
Personal exemption	2,000.00	17,572.64
Amount subject to 2% normal tax		175,939.67
Less: Additional exemption		2,000.00
Amount subject to additional normal tax		173,939.67
Normal tax (act of 1917) $175,939.67 at 2%		3,518.79
Normal tax (act of 1916) $173,939.67 at 2%		3,478.79
Surtax		39,288.82
Excess profits tax at 8%		None.
Total		46,286.40
Tax previously assessed		598.85
Additional tax due for 1917		45,687.55
Additional tax due for 1916 (above)		12,736.42
Total additional tax due		$58,423.97

The following are the charges which have been made in your returns:

1916

Deduction taken on return on account of depletion	$274,003.85
Deduction allowed	97,133.60
Amount disallowed and added to net income	176,870.25
Net income as shown on return	28,635.03
Corrected net income	$205,505.28

1917

Deduction taken on return on account of depletion	$260,072.30
Deduction allowed	92,194.92
Amount disallowed and added to net income	167,877.38
Net income as shown on return	25,634.93
Corrected net income	193,512.31

176 Your method of deducting from gross income the entire amount received as royalty from iron mines as depletion is not aproved by this office. The correct amount to be deducted for depletion, based upon the unit cost per ton of mineral reserves, as of March 1, 1913, as determined by the Valuation Engineers of this Department is shown as follows:

Ore reserve, March 1, 1913, according to the Minnesota Tax Commission, as shown on questionnaire of the Royal Mineral Association—tons	191,417,150
Less: Advance royalty payment by lessees, prior to March 1, 1913, on—tons	3,034,258
Net tonnage as of March 1, 1913	188,382,892
Your interest, one-sixth, March 1, 1913—tons	31,397,148.7
Total average extraction, 1913 to 1918, inclusive—tons	4,770,000
Maximum like of mine allowed—years	40
Interest rate allowed	6%
Royalty rate per ton	$0.25
Your capital sum returnable in 40 years	$7,849,287.18
Present worth of your interest, March 1, 1913	2,782,551.64
Unit cost per ton, March 1, 1913, basis for depletion	$0.0886243
Depletion in 1916, 1,096,015.4 tons at $0.0886243	$97,133.60
Depletion in 1917, 1,040,289.4 tons at $0.0886243	92,194.92

The additional taxes in the amount as noted above will be assessed at an early date and notice as to place and time of payment will be sent you by the collector of internal revenue for your district.

Respectfully,

(Signed) G. V. NEWTON,
Acting Assistant to the Commissioner.

177 *Plaintiff's Exhibit L*

JUNE 20, 1922.

I.T.—EUDORA HULL SPALDING,
2626 Prairie Avenue,
Chicago, Illinois.

Exam. officer, W. W. Elston

	Additional tax due
1917	$ 40,892.97
1918	77,098.56
1919	20,225.49
Total addl. tax due	$138,217.02

Protested by taxpayer.

COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

Attention head, field audit division

Enclosed herewith is a report of Revenue Agent William W. Elston, dated May 26, 1922, covering his investigation of the above individual for the years 1917 to 1919, inclusive, indicating a total additional tax due in the sum of $138,217.02, which I recommend be assessed.

In accordance with field order #25, the taxpayer will be furnished with a copy of this report.

Enclosure: Duplicate of letter to taxpayer requesting acknowledgment of receipt of copy of report.

One (1) transcript returned herewith, viz: 1916.

E. E. ALDEN,
Internal Revenue Agent in Charge.

M C G.

178 Eudora Hull Spalding, 1917

Schedule 1.—Block adjustments

Block	Return	Additions	Reductions	Corrected
D-3	260,072.30		96,870.74	163,201.56
F	15,572.64	993.75		16,566.39
G	6,721.34		5,371.34	1,350.00
H	14,299.35	5,398.34		19,697.69
I	296,665.63			200,315.64
J	286,806.88		304,839.10	1,967.78
K	30,158.75			199,147.86
M	30,158.75			199,147.86
N	4,833.81	14,619.85		19,143.66
Total	25,634.94			180,004.20

Schedule 1-A—Explanation of items

Block D—$260,072.30 incorrect. Should be $163,201.56. Represents net income received from royalties on iron ore mined in St. Louis County, Minnesota, as follows:

Total tons mined of which taxpayer owned 1/6	ton	6,241,735
1/6 of 6,241,735 tons	ton	1,040,289.2
Less—1,040,289.2 tons at 25c per ton		$260,072.30
Unit cost per ton as of March 1, 1913	$0.0886243	
1040289.2 tons at 0.0886243	$92,194.90	
Guards & checkers at mine	4675.84	
		96,870.74
Net income from mine		163,201.56

Authority for "unit cost per ton as of March 1, 1913" for depletion purposes is contained in Department Letter IR:T:NR:JBL: 26403243 to taxpayer under date of March 11, 1920.

Block F—$15,572.64, incorrect. Should be $16,566.39. Represents income received as dividends on stock of following domestic corporations:

Montgomery Ward & Co		1,260.00
California Petroleum		800.00
Cont'l & Com'l Nat'l Bk		288.00
Wilson & Co		525.00
179 American Radiator		228.00
Corn Exchange Nat'l Bk		600.00
Chicago Title & Trust		1,800.00
Butler Bros		157.50
American Telephone		1,344.00
Deere & Co		3,062.50
International Nat'l Harvester		1,400.00
National Biscuit		2,450.00
Spalding & Co		2,500.00
Lyons & Co		151.39
Total dividends		$16,566.39

Block G—$6,721.34 incorrect. Should be $1,350.00. Represents interest received on tax-free bonds as follows:

Illinois Central R. R	$1,350.00

Block H—$14,299.35 incorrect. Should be $19,697.69. Represents other income as follows:

Interest, bank deposits, mtgs. etc		9,007.98
Interest on bonds of domestic corporations		5,408.63
Interest foreign bonds:		
City of Calgary	980.00	
Bell Tel. of Canada	1,250.00	
Providence of Manitoba	1,225.00	
Great B. & Ireland	1,100.00	
French Republic	704.08	
		5,259.08
2% of block G		27.00
		19,697.69

Block J—$266,506.88 incorrect. Should be $1,667.78. Represents deductions as follows:

Taxes, R. E. Pasadena, Cal., vacant		597.08
Taxes, 2626 Prairie Ave., Chicago (no loc. impr.)		570.90
Taxes, Mid. Country Club dues		100.00
Taxes, Cook Co. R. E., vacant		149.80
Atty. fees for year 1917		1,417.78
		250.00
Total deductions		1,667.78

180 Item $4,765.84—Expenses for guard and checkers at mines deducted and reported under block D.

Item $260,072.30—Depletion—Disallowed.

Block N—$4,523.81 incorrect. Should be $19,143.66. Represents following contributions, of which above amount reported was supposed to be 15% of net income, but corrected return shows sufficient net income to allow contributions as follows:

Net income before deducting contributions	$194,291.04
15% of $194,291.04=$19,143.66.	
$19,143.66—Deductible contributions:	
Contributions—	
Chicago Institute of Tuberculosis	6,000.00
Am. Fund for French Wounded	18,438.08
Am. Hospital, Florence	170.00
Am. Field Service Ambulance	8,200.00
French Facial Surgery Charty	610.00
Visiting Nurse L, Chicago	1,200.00
J. League	75.00
Am. Rights League	50.00
Need Dept. U. S. N. R. F	85.00
Roe Hampton Hospital, Eng. Chantg	119.12
B. F. D. Blink Fund	25.00
Eli Bates House	50.00
Women's War Relief State	75.00
Belgian Relief Fund	550.00
Christmas Ine. Fund A. S	10.00
Civic Music Assn. festival	5.00
Red Cross seals	5.00
Total contributions	$35,667.20

181 Eudora Hull Spalding—1917

Schedule 2.—Computation of tax

Total net income, Schedule 1		$180,004.20
Less: Exemption	$2,000.00	
Dividends	16,566.39	
		18,566.39
Income subject to normal tax		161,437.81
Tax 2% on $161,437.81	3,228.76	
Tax 2% on $159,580.99	3,188.76	
		6,417.52
Surtax on income (wife)	35,101.30	35,101.30
Total tax		41,518.82

Less tax withheld at source (for 1917 not to exceed normal tax)	$27.00	
		$27.00
Total tax assessable		41,491.82
Tax previously assessed		598.85
Additional tax to be assessed		$40,892.97

Schedule 3—1918—Block adjustments

Block	Return	Additions	Reductions	Corrected
A	17,475.72			17,475.72
D	None.	Cr. 4,400.99		Cr. 4,400.99
E	None.	138,287.12		138,287.12
F	1,350.00			1,350.00
G	30,119.50		2,216.25	32,335.84
H	48,945.31			185,047.69
I	18,163.09	2,444.73		21,348.51
J	30,782.22			163,699.13
K-a	14,846.50	437.50		15,284.00
K-b	None.			None.
L	45,628.72			178,983.13
Total	45,628.72			178,983.13

Schedule 3-A—Explanation of items

Block A—$17,475.72 correct. Represents net profits from *p*itrous fruit.

182 **Represents net profits from citrus fruit farm located in Ventura County, California, as follows:**

Gross receipts and sales		167,916.58
Less:		
Hired help	84,078.01	
Seeds & plants	5,346.90	
Fertilizer & 'prays	2,009.85	
Blacksmithing	2,369.82	
Fuel & oil	2,279.94	
Taxes	6,085.75	
Ins	30.00	
Interest farm notes	1,071.49	
R. R. right-of-way		
Cultivation lease	250.00	
Sup. for barns	5,432.80	
" " bldg. hse	6,301.84	
" " packg. hse	5,516.71	
" " pump. plant	4,529.35	
" " misc. & repairs	10,694.63	
Sell'g expense	2,472.34	
Depreciation	11,971.43	
	163,521.76	
		150,440.86
Net profits		17,475.72

Depreciation schedule

Kind	Value	Life	Rate	Amount
Farm bldgs	$46,500.00	20 yrs	5%	$2,325.00
Machinery & tools	65,000.00	10 "	10%	6,500.00
Irrigation system	31,464.30	10 "	10%	3,146.43
Total depreciation				11,971.43

Block D—None reported. Should be $4,400.99 cr. Represents loss on sale of bonds as follows:

Kind	Year bought	Cost	Yr. Sold	Selling price
French Gov't	1916	$49,830.00	Nov., 1918	$46,685.00
U. S. Gov't 3rd Lib.	1918	35,000.00	" 1918	33,946.01
U. S. 4th Liberty	1918	10,000.00	" 1918	9,798.00
Total cost		94,830.00	Total sell. price	90,429.01
		90,429.01		
		4,400.99		

183 Block E—None reported. Should be $138,287.12. Represents net income received from iron ore mined and sold in St. Louis County, Minnesota, as follows:

Total tons mined	5,278,570.32	
5,278,570.32 tons, at 25c. per ton	$1,319,642.58	
1/6 of $1,319,642.58—Taxpayer's share	219,940.43	
Less:		
Expense of watchman & checker at mine	3,685.11	
Depletion—$879,761.72 tons, at 0.0886243	77,968.20	
		81,653.31
		138,287.12

For explanation of depletion, see Block D, Schedule 1-A—Block D.—Year 1917.

Block F—$1,350.00 correct. Represents interest received on tax-free bonds as follows:

Illinois Steel Co	1,350.00

Block E—$30,119.59 incorrect. Should be $32,335.84. Represents other income as follows:

Int. received on mtgs. bank deposits and miscel. notes		23,125.95
Foreign bonds:		
Providence of Manitoba	2,500.00	
City of Calgary	1,000.00	
Great Britain & Ireland	2,200.00	
French Republic	33.64	
Bell Tel. of Canada	1,250.00	
Russian bonds	1,944.25	
Ill. Steel Co	255.00	
		9,182.89
2% on Block F		27.00
		32,335.84

184 Block I—$18,163.09 incorrect. Should be $21,348.51. Represents following deductions:

Taxes:		
2626 Prairie Avenue	$640.00	
Cook Co. R. E. (Mid. C. C. house)	825.57	
Pasadena (vacant)	1,566.65	
Luxury auto. R. R. & excise	638.58	
		$3,670.80

Contributions:		
Chicago Institute, tuberculosis	$7,000.00	
Am. Fund French Wounded	7,319.62	
Fatherless Children, Franc'	2.00	
Visiting Nurse League	1,200.00	
Campbell Memorial	100.00	
Canteen chairs	50.00	
Ravinia Soldiers and Sailors mem	15.00	
Ill. Training School, women	50.00	
Flag for canteen	100.00	
Chicago military band	150.00	
Art Institute, Chicago	1,000.00	
Civic Music Assn	6.00	
Crippled Children's Relief (home)	500.00	
French Children's Relief	50.00	
Stage Women's War Relief	25.00	
Allied Relief Com	5.00	
R. W. & B. Club	55.00	
Italian Relief Assn	50.00	
		$17,677.62
Total deductions		21,348.51

Block K-a—$14,846.50 incorrect. Should be $15,284.00. Represents income received as dividends on stock of following domestic corporations:

Chicago Title & Trust Co	1,800.00
Corn Exchange Nat'l Bk	600.00
Continental & Com. Nat'l Bk	372.00
Montgomery Ward	1,767.50
American Radiator	216.00
A. G. Spalding & Bros	2,765.00
Amer. Tel. & Tel	1,480.00
Deere & Co	2,187.50
Butler Bros	174.00
Int. Nat'l Harvester	1,400.00
Nat'l Biscuit	2,450.00
Santa Paolo Nat'l Bk	72.00
Total dividends	15,284.00

185 Schedule 4—Computation of tax

Total net income, schedule 3		178,983.18
Less: Exemption	2,000.00	
Dividends	15,284.00	
		17,284.00
Income subject to normal tax		161,699.18
Tax 6% on $4,000.00	240.00	
Tax 12% on 157,699.18	18,923.90	
		19,163.90
Surtax on wife's income		65,740.58
Total tax		84,904.48
Less tax withheld at source (for 1917 not to exceed normal tax)	27.00	27.00
Total tax assessable		84,877.48
Tax previously assessed		7,778.92
Additional tax to be assessed		77,098.56

Schedule 5—Block adjustments

A	4,712.17			4,712.17
D	Cr. 48,604.36		442.56	Cr. 48,161.80
E	None.	97,396.05		97,396.05
F	1,350.00	255.00		1,605.00
G	20,176.29		222.90	19,953.39
H	CR. 2,218.04			75,504.81
I	9,139.61	2,717.88		11,857.49
J	Cr. 11,357.65			63,647.32
K-a	18,151.95			18,151.95
L	6,794.30			81,799.27
Total	6,794.30			81,799.27

186 Schedule 5-A

Block A—$4,712.17 correct. Represents net income derived from ranch located in Ventura Co., California, as follows:

Gross income		243,098.03
Less—		
Hired help	119,088.70	
Feed, hay, etc	8,880.92	
Seeds & plants	6,703.95	
Fertilizer & spray	16,924.36	
Blacksmithing	2,480.13	
Fuel oil for tractors	11,785.67	
Taxes, R. E. & personal	7,209.41	
Insurance	2,775.96	
Interest paid	996.52	
R. R. right of way, lease	600.00	
Supplies for barn	1,457.18	
" pck. hse	15,048.48	
" bdg. hse	8,934.68	
" pumping plant	926.05	
" tractors	1,656.76	
Miscel. materials & reprs	8,813.03	
Selling expense	4,385.61	
Depreciation	19,718.45	
		238,385.86
Net profits		4,712.17

187 *From depletion schedule*

Kind	Value	Life	Rate	Amount
Farm bldgs	$80,000.00	20 yrs	5%	$4,000.00
" mchy. & tools	82,184.50	10 "	10%	8,218.45
" irrigation system	65,000.00	16 2/3 yrs	6%	3,900.00
" pumping plant	60,000.00	16 2/3 "	6%	3,600.00
Total depreciation				19,718.45

Block D—$48,604.36 loss. Incorrect. Should be $48,161.80 loss. Represents net loss on sale of stocks as follows:

Kind	Value 3/1/13	Date sold	Selling price
300 Nat'l Biscuit	$42,150.00	Sept. 1919	$39,871.00
80 Deere & Co.	24,500.00	" "	24,953.80
18 Amer. Rad. Company	4,788.00	Oct. "	5,930.14
30 Ill. Steel	26,325.00	" "	25,417.50
296 Mantg. Wood	31,265.00	" "	33,101.60
20 Inter. Harvester	22,600.00	" "	22,762.00
5½% Russian bonds, 1/29/17	61,318.00	Dec. "	7,761.86
12 Butler Bros.	2,574.00	" "	3,290.76
Total cost	215,520.00	Total sales	163,097.14

	Cost price		Selling price
Total cost brot. forward	$215,520.00		$163,097.14
70 Com. Exc. Bank	15,600.00	Dec. 1919	19,951.04
24 Cont. & Com. Bk.	7,512.00	" "	7,463.32
4th Lib. loan bonds	650.00		608.50
Total cost	239,282.00	Total sales	191,120.20

$239,282.00—$191,120.20—$48,161.80 net loss.

Block E—None reported—Should be $97,396.05. Represents net income from iron mines in Minnesota as follows:

Total tons ore mined, $3,717,160.56.
$3,717,160.56 at 25c. per ton $929,290.14
⅙ of $929,290.14—$154,881.69—taxpayer's share.
Less depletion, $54,905.13.
Watchers and checkers $2,580.51 $57,485.64

Net profits 97,396.05

188 Depletion schedule

Unit value per ton of ore as of 3-1-1913—$0.0886243.
⅙ of 3,717,160.56 tons—619,526.76—taxpayer's tonnage.
619,526.76×0.0886243—$54,905.13—depletion.

Block F—$1,350.99 incorrect. Should be $1,605.00. Represents income received as interest on following tax-free bonds.

Illinois Steel Co. $1,605.00

Block G—$20,176.29 incorrect. Should be $19,953.39. Represents other income as follows:

Interest from banks			$1,396.90
" " mtgs			3,220.14
" " A. G. Spalding			1,410.00
" " Pearson Taft & Co			5,000.00
Foreign bonds:			
Russian bonds	$1,944.25		
City of Calgary	1,000.00		
Province Manitoba	2,500.00		
Great Britain & Ireland	2,200.00		
Bell Tel. of Canada	1,250.00		
		8,894.25	
2% of block F		32.10	
			19,953.39

Block I—$9,139.61 incorrect. Should be $11,857.49. Represents deductions as follows:

Taxes—			
R. E. Pasadena, Cal. (vacant)			1,308.32
2626 Prairie Ave., residence			640.09
Auto, R. R., theater, and luxury taxes			638.58
Contributions:			
LaVina T. B. Hospital		110.50	
Boys & Girls Aid Society		10.00	
Amer. French Wounded		3,380.00	
Visiting Nurse's Assn		1,200.00	
Chicago T. B. Institute		4,500.00	
Bohemian Relief		25.00	
Needworth Guid Char		10.00	
Childrens Fund, France		5.00	
Childrens Home, Chicago		10.00	
Art Institute		10.00	
Chicago Lying-in Hospital		10.00	
			9,270.50
Total deductions			11,857.49

189 Block K-a—$18,151.95 correct. Represents income from dividends on stock of following domestic corporations.

A. G. Spalding & Bros	3,792.00
Nat'l Biscuit Co	2,450.00
Montgomery Ward	2,295.20
Deere & Co	1,750.00
Inter Nat'l Harvester Co	1,400.00
Amer. Tel. & Tel	1,480.00
Chicago Title & Trust	1,800.00
Corn Exc. Nat'l Bank	570.00
Cont. & Com. Nat'l Bank	336.00
American Radiator	216.00
Butler Bros	174.00
Santa Paula Bk	143.82
Gulf Land & Impt. Co	100.93
Misel. unknown stock	1,644.00
	18,151.95

Schedule 6—Computation of tax

Total net income, schedule 5		81,799.27
Less: Exemption	2,000.00	
Dividends	18,151.95	20,151.95
Income subject to normal tax		61,647.32
Tax, 4% on $4,000.00	160.00	
Tax, 8% on 57,647.00	4,611.76	4,771.76
Surtax—income	15,511.72	15,511.72
Total tax		20,283.48
Less tax withheld at source (for 1917 not to exceed normal tax)	32.10	32.10
Total tax assessable		20,251.38
Tax previously assessed		25.89
Additional tax to be assessed		20,225.49

190 *Plaintiff's Exhibit M*

(Cut)

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Income Tax Unit.
IT:NR:F-5.
CWA-4233.

Certificate of overassessment.
Number: 118727.
Allowed: $12,878.41.
Rejected: $———.

MRS. EUDORA HULL SPALDING,
2026 Prairie Ave., Chicago, Ill.

MADAM: An audit of your income tax return for 1917, Form 1040, and examination of related claim (if any), indicates that the amount of tax assessed to you for this year was in excess of the amount due:

Tax previously assessed:		
Original assessment	$598.85	
Additional assessment, September, 1920, page 49, line 7	45,687.55	
		$46,286.40
Total tax liability		33,407.99
Overassessment		$12,878.41

For details see the attached statement.

The amount of the overassessment will be applied as follows:

1. If the tax has not been paid, the amount will be abated by the collector of internal revenue for your district.

2. If the tax has been paid, the amount of the overpayment will either be credited against the tax due (if any) on income returns of years other than that on which the overpayment was made; or

3. The balance (if any) of the overpayment is refunded to you by check of the Treasury Department, forwarded herewith.

Included in the accompanying check is interest in the
191 Amount stated below, allowed on the refund or credit, from the date.

Respectfully,

J. G. BRIGHT,
Deputy Commissioner.
By S. ALEXANDER,
Head of Division.

Schedule Number: 9717.
District: 1st Ill.
Item-71-Sheet-3.
Amount abated: $12,878.41.
Amount credited: $———.
Year: 1917–1920.
Account number: Sept. 49–7–23B.
Amount refunded: $———.
Interest: $———.
Stamp: Instruction executed. Stamp here signature collector int. rev.
192 IT:NR:F–5
CEW–4233

Statement In re: Eudora Hull Spalding, Chicago Ill.

1917

Net income before deducting contributions as shown by your books of account			$194,291.04
Less:			
Net income from mining interests as reflected above		$163,201.56	
Receipts from mining interests	$260,072.30		
Depletion allowed	$99,561.20		
Guards and checkers at mine	4,675.84		
	104,237.04		
Corrected net income from mine		155,835.26	
			7,366.30
Balance			$186,924.74
Less: 1917 loss on farm			2,327.60
Corrected net income before deducting contributions			$184,597.14
Less: Contributions, 15% of $184,597.14, which is limit as a deduction			27,689.57
Corrected net income			$156,907.57
Less:			
Dividends		$16,566.39	
Exemption		2,000.00	
			18,566.39

Amount subject to additional normal tax at 2%	$136,341.18
Less: Additional exemption	2,000.00
Amount subject to additional tax at 2%	$136,341.18
Normal tax at 2% on $138,341.18	$2,766.82
Normal tax at 2% on $136,341.18	2,726.82
Total normal tax	$5,493.64
Less: Tax withheld at source on tax-free covenant bonds	27.00
Balance of normal tax due	$5,466.64
Surtax on $156,907.57	27,941.35
Total	$33,407.99

193 *Plaintiff's Exhibit N*

(Check)

Gardner and Carton, 76 West Monroe Street

Harris Trust and Savings Bank 2-28 02

CHICAGO, *Sept. 29, 1924.* No. 6487.

Pay to the order of Mabel G. Reinecke, collector internal revenue, $39,480.22 thirty nine thousand four hundred eighty and no/100 dollars.

GARDNER AND CARTON.

(Stamp:) N. P. Int. Rev. 2-30.

(Canceled perforation:) Paid 10-2-24 2-28.

(Endorsed:) Pay to the order of Federal Reserve Bank of Chicago. Oct. 1, 1924. Mabel G. Reinecke 32, collector. Kent W. Black, cashier, income & profit tax acct.

(Stamped on back:) X 15. Pay to the order of any bank or banker. Prior endorsements guaranteed. Oct. 2-1924. Federal reserve bank of 2-30, Chicago 2-30. Wm. C. Bachman, controller of collections.

194 *Plaintiff's Exhibit O*

(Letterhead)

(A-2 letter)

TREASURY DEPARTMENT,

(Cut) *Washington, November 10, 1920.*

Office of Commissioner of Internal Revenue

Address reply to Commissioner of Internal Revenue and refer to—
IT:SA:NR.
CT:45900.

Mrs. EUDORA HULL SPAULDING,
2626 Prairie Avenue, Chicago, Illinois.

MADAM: An examination of the information submitted in connection with your income-tax return for the year 1918 has resulted in certain changes.

Your corrected net income is $187,628.02 and is subject to tax as follows:

Total net income		$187,628.02
Less: Dividends on stock of corporations		14,846.50
		$172,781.52
Less: Personal exemption		2,000.00
Balance		$170,781.52
Amount subject to tax at 6%		4,000.00
Balance subject to tax at 12%		$166,781.52
Normal tax at 6% on $4,000.00		$240.00
Normal tax at 12% on $166,781.52		20,013.78
Surtax at 1918 rates		70,581.69
Surtax at 1917 rates		155.00
Total tax		$90,990.47
Tax paid at source (2% of $1,350.00)		27.00
Balance of tax		$90,963.47
Tax previously assessed		7,778.92
Additional tax due		$83,184.55

195 The following are the changes which have been made in your return:

Net income has been increased from $45,628.79 to $187,628.02, as follows:

Net income reported		$45,628.79
Block G: Tax on tax-free-covenant bonds added (2% on $1,350.00)		27.00
Block E: Excessive depletion disallowed as follows:		
Depletion deducted	$219,940.43	
Depletion allowed	77,968.20	
		141,972.23
Net income as corrected		$187,628.02

The allowable deduction for depletion for the year 1918 has been computed on the following basis:

The value of the total royalties to be received during life of mines discounted of March 1, 1913, at six per cent and four per cent interest gives a unit value as of March 1, 1913, of $0.0886243 a ton.

Production during the year 1918	879,761 tons.
Depletion deduction for year 1918 ($0.0886243×879761)	$77,968.20

The additional tax as noted above will be assessed at an early date, and notice as to place and time of payment will be sent you by the collector of internal revenue for your district.

Respectfully,

G. NEWTON,
Deputy Commissioner.

196 *Plaintiff's Exhibit P*

(Letterhead)

(Cut) Treasury Department, Washington

Office of Commissioner of Internal Revenue, Income Tax Unit

IT:NRA:F—5
CWA—4233
Mrs. EUDORA HULL SPALDING,
2626 Prairie Avenue,
Chicago, Illinois.

Certificate of overassessment
Number: 159862
Allowed: $10,826.72
Rejected: $———

MADAM: An audit of your income tax return for 1918, Form 1040, and examination of related claim (if any), indicates that the amount of tax assessed to you for this year was in excess of the amount due:

Tax previously assessed, original assessment	$7,778.92	
Additional assessment, January, 1921, page 38, line 0	83,184.55	
		$90,963.47
Total tax liability		80,136.75
Overassessment		$10,826.72

For details, see attached statement.

The amount of the overassessment will be applied as follows:

1. If the tax has not been paid, the amount will be abated by the collector of internal revenue for your district.

2. If the tax has been paid, the amount of the overpayment will either be credited against the tax due (if any) on income returns of years other than that on which the overpayment was made; or

3. The balance (if any) of the overpayment is refunded to
197 you by check of the Treasury Department, forwarded herewith.

Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit, from the date

Respectfully,

E. G. BATSON,
Deputy Commissioner.
By G. ALEXANDER,
Head of Division.

Schedule number, 9606.
District, 1st Ill.
Item 26—sheet 1.
Amount abated, $10,826.72.
Amount credited, $———
Year, 1918–1921, Jan. 38–0–23B.
Account number, ———
Amount refunded, $———
Interest, $———

(Stamp.) Instructions executed stamp here. Signature collector int. rev.

198

Statement

IT:NRA:F–5
CWA–4233

In re: Eudora Hull Spaulding, Chicago, Illinois, 1918

Net income as shown by your books of account			$178,983.18
Net income from mining, reflected above		$138,287.12	
Receipts from mine interests	$219,940.41		
Less:			
Depletion allowed	$84,979.55		
Guards and checkers at mine	3,685.11		
	88,664.66		
Corrected net income from mine		131,275.75	7,011.37
Corrected net income			$171,971.81
Less:			
Exemption		$2,000.00	
Dividends		15,284.00	17,284.00
Balance			$154,687.81
Amount subject to 6% normal tax			4,000.00
Balance subject to 12% normal tax			$150,687.81
Normal tax at 6% on $4,000.			$240.00
Normal tax at 12% on $150,687.81			18,082.54
Surtax at 1918 rates			61,814.21
Total			$80,136.75

199 *Plaintiff's Exhibit Q*

(Check)

Harris Trust and Savings Bank 2-28

CHICAGO, *Sept. 29, 1924.* No. 6476.

Pay to the order of Mabel G. Reinecke, collector internal revenue ---------- $85,502.71

Eighty-five thousand five hundred two and 71/100 dollars

GARDNER AND CARTON.

Gardner and Carton, 76 West Monroe Street

(Perforated:) Paid 10-2-24 2-28.

(Stamp:) N. P. int. rev. 2-30.

(Endorsed:) Pay to the order of Federal reserve bank of Chicago Oct. 1, 1924, Mabel G. Reinecke, 3, collector. Kent W. Black, cashier. Income & profit tax acct. X 15, pay to the order of any bank or banker. Prior endorsements guaranteed. Oct. 2, 1924. Federal Reserve Bank of Chicago, 2-30. 2-30, Wm. C. Bachman, controller of collections.

200 *Plaintiff's Exhibit R*

TREASURY DEPARTMENT
Internal Revenue Service
Form 843—Jan., 1922
Comptroller General U. S.
January 18, 1922

Claim for—

☐ Abatement of tax assessed.
☐ Credit against outstanding assessments.
☒ Refund of taxes illegally collected.
☐ Refund of amounts paid for stamps used in error or excess.

Notice to Collector.

Collector must indicate in block above the kind of claim, except in income tax cases.

Important	Date received by administrative unit. Recorded Apr. 8, 1926	Collector's notation
File with collector of internal revenue where assessment was made. Not acceptable unless completely filled in. 19899	Stamp here	District..... Account number..... Date received: Received 1/21/26. Collector Int. Rev., 1st Dist. Ill. Stamp here

COUNTY OF COOK, } ss: 2723
State of Illinois, }

944269

Type or print

Eudora Hull Spalding
(Name of taxpayer or purchaser of stamps)
C/o Gardner and Carton, 76 W. Monroe St., Chicago, Ill.
(Residence—give street and number as well as city or town and State)

(Business address)

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named,

and that the facts given below with reference to said statement are true and complete:

	Period	Year
1. Business in which engaged		
2. Character of assessment or tax—income tax	From: Jan. 1	1917
	To: Dec. 31	1917

(State for or upon what the tax was assessed or the stamps affixed)

201 3. Amount of assessment or stamps purchased $39,480.22
4. Reduction of tax liability requested (income and profits tax) .....
5. Amount to be abated $36,310.29
6. Amount to be refunded (or such greater amount as is legally refundable ..... $
7. Dates of payment (see collector's receipts or indorsements of canceled checks), September 29, 1924. ..... $36,310.29
(If statement covers income tax liability, items 8–11, inclusive, must be answered.)
8. District in which return (if any) was filed 1st Illinois.
9. District in which unpaid assessment appears.
10. Amount of overpayment claimed as credit $36,310.29
11. Unpaid assessment against which credit is asked; period from ——— to ——— ..... $

Deponent verily believes that this application should be allowed for the following reasons:

Tax as assessed is based upon income received from royalties from iron ore mines. Depletion amounting to $99,561.20 was allowed to taxpayer, whereas depletion amounting to $203,510.86 should be allowed. The latter amount is the present worth of the ore mined in 1917, as of March 1, 1913, and is arrived at by discounting the amount received in 1917 at 5% to March 1, 1913.

(Stamp:) Received Apr. 7, 1926, claims control section.

(Attach additional sheets if necessary)

(Signed) EUDORA HULL SPALDING.

Sworn to and subscribed before me this 16th day of January, 1926.

[SEAL.] JAY T. JUDD, *Notary Public.*
(Title)

(This affidavit may be sworn to before a deputy collector of internal revenue or revenue agent without charge)

202 Certificates

M H 5/18/26

I certify that an examination of the records of the Bureau of Internal Revenue shows the following facts as to the assessment and payment of the tax:

Schedule No.

Name of taxpayer	Character of assessment and period covered	List	Year	Month	Page	Line	Amount	Date paid	District in which paid
Eudora Hull Spalding.	Income 1917. "	IT.... 23B....	1918 1920	Feb... Sept..	2078 49	2 7	$598.85 12,878.41 32,909.14	6/26/18..... Abt ITA.. 10/1/24.....	1st. 9717

12878.41 Abt ITA 9717

J. G.
MABEL G. REINECKE,
Collector of Internal Revenue.

_____ _____,
Assessment Clerk, Commissioner's Office.

I certify that the records of my office show the following facts as to the purchase of stamps:

Claim No.

To whom sold or issued	Kind	Number	Denomination	Date of sale or issue	Amount	If special tax stamp, state— Serial number	If special tax stamp, state— Period commencing—

Claim No.

_____
Collector _____, District _____

Schedule No.

Schedule number _____ District _____
Allowed or rejected number_____ _____
(Nature of tax)

Claimant_____
Address_____

(Stamp.) Rejected 5349 I. T. Schedule.
KB R-1 5/7/26 Examined and submitted for action_____, 19____

Claim examined by— M. W.
Claim approved by—
Chief of Division.

Committee on claims

Amount claimed..... $36,310.29 _____
Amount allowed..... $_____ _____
Amount rejected..... $36,310.29 _____

203 *Plaintiff's Exhibit S*

TREASURY DEPARTMENT
Internal Revenue Service
Form 843—Jan., 1922
Comptroller General U. S.
January 18, 1922

Claim for—

- ☐ Abatement of tax assessed.
- ☐ Credit against outstanding assessments.
- ☒ Refund of taxes illegally collected.
- ☐ Refund of amounts paid for stamps used in error or excess.

Notice to Collector:

Collector must indicate in block above the kind of claim, except in income-tax cases.

Important	Date received by administrative unit	Collector's notation
File with collector of internal revenue where assessment was made. Not acceptable unless completely filled in. 19598	Recorded Mar. 17, 1926 Stamp here	District..... Account number..... Date received: Received 1/21/26 Collector Int. Rev., 1st Dist. Ill. Stamp here ..... Collector of Internal

STATE OF ILLINOIS, 2723
County of Cook, ss:
936325 Claims control section

Type or print

Eudora Hull Spalding.
(Name of taxpayer or purchaser of stamps)
C/o Gardner and Carton, 76 W. Monroe St., Chicago, Ill.
(Residence—give street and number as well as city or town and State)

(Business address)

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

	Period	Year
1. Business in which engaged.....		
2. Character of assessment or tax—income tax.....	From: Jan. 1 To: Dec. 31	1918 1918

(State for or upon what the tax was assessed or the stamps affixed)

204 3. Amount of assessment or stamps purchased..... $85,502.71
4. Reduction of tax liability requested (income and profits tax)..... $62,767.52
5. Amount to be abated..... $.....
6. Amount to be refunded (or such greater amount as is legally refundable)..... $62,767.52

7. Dates of payment (see collector's receipts or indorsements of canceled checks), Sept. 29, 1924.
(If statement covers income-tax liability, items 8–11, inclusive, must be answered.)
8. District in which return (if any) was filed 1st Illinois.
9. District in which unpaid assessment appears.
10 Amount of overpayment claimed as credit $62,767.52
11. Unpaid assessment against which credit is asked; period from ------ to ------ ..... $------

Deponent verily believes that this application should be allowed for the following reasons:

Tax as assessed is based upon income received from royalties from iron ore mines. Depletion amounting to $84,979.55 was allowed to taxpayer, whereas depletion amounting to $161,299.31 should be allowed. The latter amount is the present worth of the ore mined during 1918, as of March 1, 1913, and is arrived at by discounting the amount received in 1918 at 5% to March 1, 1913.

(Stamp:) Received Mar. 11, 1926, claims control section.

(Attach additional sheets if necessary)

(Signed) EUDORA HULL SPALDING.

Sworn to and subscribed before me this 16th day of January, 1926.

[SEAL.] JAY T. JUDD, *Notary Public.*
(Title)

(This affidavit may be sworn to before a deputy collector of internal revenue or revenue agent without charge)

205 Certificates

M H 5/18/26

I certify that an examination of the records of the Bureau of Internal Revenue shows the following facts as to the assessment and payment of the tax:

Name of taxpayer	Character of assessment and period covered	List	Year	Month	Page	Line	Amount	Date paid	District in which paid	Claim No.
Eudora Hull Spalding.	Income 1918. 1918.	23B... 27.....	1921 1919	Jan...	38 3139	0 33	$83,184.55 7,778.92	....	....	

J. G.
MABEL T. REINECKE,
Collector of Internal Revenue.

Assessment Clerk, Commissioner's Office.

I certify that the records of my office show the following facts as to the purchase of stamps:

Claim No.	To whom sold or issued	Kind	Number	Denomination	Date of sale or issue	Amount	If special tax stamp, state— Serial number	If special tax stamp, state— Period commencing—	Schedule No.

Collector ------ *District* ------

Schedule number ---------- District ----------
Allowed or rejected number ------ ----------
(Nature of tax)

Claimant ----------
Address ----------
Examined and submitted for action ----------, 19----
(Stamp.) Rejected 5349 I. T. Schedule.

Schedule No.

Claim examined by— M W		Committee on claims
Claim approved by—	Amount claimed--- $62,767.52	----------
----------	Amount allowed--- $----------	----------
Chief of Division.	Amount rejected- $62,767.52	----------

206 *Plaintiff's Exhibit T*

(Cut) Treasury Department, Washington

Office of Commissioner of Internal Revenue

Address reply to
Commissioner of Internal Revenue
and refer to
IT:PA:PYA
ARM

MAY 12, 1926.

MRS. EUDORA HULL SPALDING,
% Gardner and Carton,
76 W. Monroe Street, Chicago, Illinois.

MADAM: Your claim for refund of $36,310.29 individual income taxes for the year 1917 has been examined.

The claim is based on the statement that the depletion allowed in the former audit of the return was insufficient.

You are advised in this connection that section 284(g) of the revenue act of 1926 provides that "If the taxpayer has within five years from the time the return for the taxable year 1917 was due filed a waiver of his right to have the taxes due for such taxable

year determined and assessed within five years after the return was filed, then a credit or refund relating to the taxes for the year in respect of which the waiver was filed shall be allowed or made if a claim therefor is claimed either on or before April 1, 1925, or within four years from the time the tax was paid."

Inasmuch as no waiver or claim was filed by you within the required periods, the claim will be rejected. The rejection will officially appear in the next schedule to be approved by the commissioner.

Respectfully,

C. R. NASH,
Assistant to the Commissioner.
By A. LEWIS,
Head of Division.

207 *Plaintiff's Exhibit U*

(Cut) Treasury Department, Washington

Office of Commissioner of Internal Revenue

Address reply to
Commissioner of Internal Revenue
and refer to
IT:PA:PYA
ARM

MAY 12, 1926.

MRS. EUDORA HULL SPALDING,
% Gardner and Carton,
76 W. Monroe Street, Chicago, Illinois.

MADAM: Your claim for refund of $62,767.52 individual income tax for the year 1918 has been examined.

The claim is based on the statement that the depletion allowed in the former audit of the return was insufficient.

You are advised in this connection that section 284(g) of the revenue act of 1926 provides that—

"If a taxpayer has on or before June 15, 1924, filed a waiver in respect to the tax due for the taxable year 1918, then credit for refund relating to the taxes for the year in which the waiver was filed shall be allowed or made if claim therefore is filed either on or before April 1, 1925, or within four years from the time the tax was paid."

Inasmuch as no waiver or claim was filed by you within the required periods, the claim will be rejected. The rejection will officially appear in the next schedule to be approved by the commissioner.

Respectfully,

C. R. NASH,
Assistant to the Commissioner.
By ——— ———,
Head of Division.

208 *Plaintiff's Exhibits V and W and X in evidence*

10/31/1924.

Present value March 1, 1913, i. e. the sum which placed at interest on that date, at the rate of 5% per annum, simple interest, will produce the accumulated sum on the later date specified	0.2095	69,251.05
Simple interest for 3 years	.0315	10,387.65
" " " 315 days	.0090	2,988.23
Accumulated sum January 10, 1917, royalty paid	0.25	82,626.93
Present value March 1, 1913	0.2074	10,153.29
Simple interest for 4 years	.0415	2,030.66
" " " 40 days	.0011	55.63
Accumulated sum April 10, 1917, royalty paid	0.25	12,239.58
Present value March 1, 1913	0.2063	47,434.55
Simple interest for 4 years	.0410	9,486.91
" " " 131 days	.0037	851.22
Accumulated sum July 10, 1917, royalty paid	0.25	57,772.68
Present value March 1, 1913	0.2032	87,791.42
Simple interest for 4 years	.0406	17,558.28
" " " 223 days	.0062	2,681.85
Accumulated sum October 10, 1917, royalty paid	0.25	108,031.55
Present value March 1, 1913	0.2011	50,778.82
Simple interest for 4 years	.0402	10,155.76
" " " 315 days	.0087	2,191.14
Accumulated sum January 10, 1918, royalty paid	0.25	63,125.72
Present value March 1, 1913	0.1991	9,748.90
Simple interest for 5 years	.0498	2,437.22
" " " 40 days	.0011	53.42
209 Accumulated sum April 10, 1918, royalty paid	0.25	12,239.54
Present value March 1, 1913	0.1972	43,607.14
Simple interest for 5 years	.0493	10,901.78
" " " 131 days	.0035	782.54
Accumulated sum July 10, 1918, royalty paid	0.25	55,291.46
Present value March 1, 1913	0.1952	69,687.87
Simple interest for 5 years	.0488	17,421.97
" " " 223 days	.0060	2,128.82
Accumulated sum October 10, 1918, royalty paid	0.25	89,238.66

(Endorsed:) * * * (Caption) * * * Bill of exceptions. Filed Jul. 13, 1928, at ____ o'clock ____m. Charles M. Bates, clerk. George E. Q. Johnson, United States attorney.

In United States District Court

Order approving bill of exceptions

July 13, 1928

This day comes the defendant by her attorney and presents herein the defendant's bill of exceptions which bill of exceptions is approved and signed by the court and ordered by the court to be filed by the clerk of this court.

210 In United States District Court

Notice of appeal

Filed July 13, 1928

To: ZANE, MORSE AND NORMAN,
JOHN M. ZANE,
Rm. 709, 111 W. Monroe St., Chicago, Illinois,
GARDNER & CARTON,
HENRY G. GARDNER,
URBAN A. LAVERY,
ALFRED T. CARTON,
Rm. 1030, 33 South Clark St., Chicago, Illinois,
Attorneys for Plaintiff.

The defendant, Mabel G. Reinecke, collector of internal revenue for the first district of Illinois, hereby serves her notice that she appeals from the decision or judgment entered in the above-entitled cause on May 8, 1928. This notice is given in conformity with the provisions of the act of Congress approved January 31, 1928.

GEORGE E. Q. JOHNSON,
United States Attorney for the
Northern District of Illinois.

Received a copy of the above and foregoing notice of appeal this 13th day of July, 1928.

ZANE, MORSE & NORMAN,
JOHN M. ZANE,
GARDNER & CARTON,
HENRY A. GARDNER,
URBAN A. LAVERY,
ALFRED T. CARTON,
Attorneys for Plaintiff.

211 In United States District Court

Notice of appeal

Filed July 13, 1928

To: ZANE, MORSE AND NORMAN,
JOHN M. ZANE,
Rm. 709, 111 W. Monroe St., Chicago, Illinois,
GARDNER & CARTON,
HENRY G. GARDNER,
URBAN A. LAVERY,
ALFRED T. CARTON,
Rm. 1030, 33 South Clark St., Chicago, Illinois,
Attorneys for Plaintiff.

You, and each of you, are hereby notified that on Friday, July 13, 1928, at the opening of court in the forenoon, or as soon thereafter

as counsel can be heard, I shall appear before his honor, Judge James H. Wilkerson, in the room regularly occupied by him as a courtroom in the Federal Building, Chicago, Illinois, and ask leave of court to file the petition of Mabel G. Reinecke, defendant, for an appeal, together with an assignment of errors, and shall enter the motion of the defendant, Mabel G. Reinecke, collector of internal revenue for the first district of Illinois, for the issuance and allowance of an appeal directed to the United States Circuit Court of Appeals for the Seventh Circuit, and for the issuance of a citation to the above-named plaintiff in accordance with said appeal, and shall also enter a motion for the entry of an order that the original bill of exceptions in the above-entitled cause may be incorporated in the record on appeal to the United States Circuit Court of Appeals for the Seventh Circuit in this cause in lieu of a copy thereof, at which time and place you may appear if you so desire.

GEORGE E. Q. JOHNSON,
United States Attorney,
Attorney for Defendant.

212 Received a copy of the above and foregoing notice this 12th day of July, A. D. 1928.

ZANE, MORSE & NORMAN,
JOHN M. ZANE,
GARDNER & CARTON,
HENRY A. GARDNER,
URBAN A. LAVERY,
ALFRED T. CARTON,
Attorneys for Plaintiff.

[File indorsement omitted.]

In United States District Court

Petition for appeal

Filed July 13, 1928

Now comes Mabel G. Reinecke, collector of internal revenue for the first district of Illinois, the defendant, by her attorney, George E. Q. Johnson, United States Attorney for the northern district of Illinois, and respectfully shows that on the eighth day of May, A. D. 1928, the court directed a verdict against your petitioner and in favor of Eudora Hull Spalding, plaintiff, and upon said verdict a final judgment was entered on the eighth day of May, A. D. 1928, against your petitioner.

Your petitioner feeling herself aggrieved by said verdict and judgment entered thereon as aforesaid, and pursuant to to authority and direction of the Attorney General of the United States, herewith petitions the court for an order allowing her to prosecute and appeal to the United States Circuit Court of Appeals for the Seventh Circuit under the laws of the United States in such cases made and provided.

Wherefore, premises considered, your petitioner prays that an appeal in this behalf be allowed to the United States Circuit Court of Appeals for the Seventh Circuit, sitting at Chicago, Illinois, in said circuit, for the correction of the errors complained of and herewith assigned, and that an order be entered allowing said
213 appeal without bond of the defendant, it appearing that the above-entitled cause is one in which the United States is the real party in interest in said cause and that said petition for appeal is filed pursuant to the authority and direction of the Attorney General of the United States.

GEORGE E. Q. JOHNSON,
United States Attorney for the Northern District of Illinois.

Dated at Chicago, Illinois, this 13th day of July, 1928.
[File indorsement omitted.]

In United States District Court

Assignment of errors

Filed July 13, 1928

Now comes the defendant, Mabel G. Reinecke, collector of internal revenue for the first district of Illinois, by George E. Q. Johnson, United States Attorney for the Northern District of Illinois, her attorney, and by direction and authority of the Attorney General of the United States, is about to file a petition for an appeal from the decision and judgment of this court rendered on the eighth day of May, A. D. 1928, in the above-entitled cause, and in connection with her petition for appeal says that in the record proceedings and in the final decision and judgment aforesaid, manifest error has intervened to the prejudice of the defendant, to wit:

1. Said District Court erred in directing a verdict for the plaintiff.

2. Said District Court erred in refusing to direct a verdict for the defendant.

3. Said District Court erred in granting the motion of the plaintiff to direct a verdict for the plaintiff.

4. Said District Court erred in refusing to grant the motion of the defendant to direct a verdict for the defendant.

214 5. The action of the District Court in instructing the jury to return a verdict for the plaintiff was against the law.

6. Said District Court erred in refusing to hold as a matter of law that a reasonable allowance to the plaintiff in this cause for the depletion of the respective mines should be computed by dividing the estimated ore reserve tonnage on March 1, 1913, of each mine into the fair market value as of March 1, 1913, of the plaintiff's interest in said mine, and multiplying the dividends so obtained by

the total tons of ore extracted from each mine, respectively, on which royalties were paid to the plaintiff during the taxable year for which the depletion allowance is claimed, provided that the aggregate of the allowances for the year 1917 does not exceed the fair market value in the mine of the ore which was mined and sold during that year, and provided further that the aggregate of the allowances made for previous years plus the amount of the allowance made for the year in question does not exceed the fair market value as of March 1, 1913, of the plaintiff's interest in the mine.

7. Said District Court erred in entering judgment for the plaintiff.

8. Said District Court erred in refusing to enter judgment for the defendant.

9. Said District Court erred in denying defendant's motion for a new trial.

10. Said District Court erred in denying defendant's motion in arrest of judgment.

Wherefore, defendant, plaintiff in error, prays that the judgment of the said District Court be reversed, etc.

GEORGE E. Q. JOHNSON,
United States Attorney for the
Northern District of Illinois,
Attorney for Defendant.

Dated at Chicago, Illinois, this 13th day of July, A. D. 1928.

Of counsel.

DWIGHT H. GREEN,
Special Assistant United States Attorney.
THOMAS H. LEWIS,
Special Attorney, Bureau of Internal Revenue.

215 In United States District Court

Order allowing appeal

July 13, 1928

This cause coming on to be heard this thirteenth day of July, A. D. 1928, on the petition of Mabel G. Reinecke, collector of internal revenue for the first district of Illinois, defendant, and the said defendant appearing by her attorney, George E. Q. Johnson, United States attorney for the Northern District of Illinois, for an order allowing her to prosecute an appeal to the United States Circuit Court of Appeals for the Seventh Circuit and an assignment of errors accompanying the said petition, and it appearing that notice of this proceeding has been given to the plaintiff:

It is ordered in open court that the prayer of said petitioner be, and it is hereby, allowed, and the appeal prayed for by said petitioner is hereby granted and allowed without bond of the defendant,

it appearing that the above-entitled cause is one in which the United States is the real party in interest in said cause, and this appeal being taken by the direction and authority of the Attorney General of the United States of America.

Enter:

JAMES H. WILKERSON,
Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division.

216 *Notice of filing præcipe*

Filed July 17, 1928

To: ZANE, MORSE & NORMAN,
JOHN M. ZANE,
Rm. 709, 111 W. Monroe St., Chicago, Illinois.
GARDNER & CARTON,
HENRY A. GARDNER,
URBAN A. LAVERY,
ALFRED T. CARTON,
Rm. 1030, 33 S. Clark St., Chicago, Illinois,
Attorneys for Plaintiff.

You, and each of you, are hereby notified that I have this 17th day of July, 1928, filed with the clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in the above-entitled cause, a præcipe for transcript of record, a copy of which said præcipe is attached hereto.

GEORGE E. Q. JOHNSON,
United States Attorney for the Northern District of Illinois,
Attorney for Defendant.

Received a copy of the above, and foregoing notice, together with a copy of the præcipe mentioned therein, this 17th day of July, A. D. 1928.

ZANE, MORSE & NORMAN,
JOHN M. ZANE,
GARDNER & CARTON,
HENRY A. GARDNER,
ALFRED T. CARTON,
URBAN A. LAVERY,
Attorneys for Plaintiff.

217 In United States District Court

Præcipe for transcript of record

To CHARLES M. BATES, Esq.,
Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division.

You will please prepare transcript of record in the above-entitled cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Seventh Circuit under the appeal heretofore allowed in said cause, and include in said transcript the following:

1. Placita.
2. Declaration.
3. Plea of Defendant.
4. Motion by defendant on May 3, 1928, for instructed verdict.
5. Motion by plaintiff on May 3, 1928, for instructed verdict.
6. Order of May 4, 1928, overruling defendant's motion for instructed verdict.
7. Order of May 4, 1928, overruling plaintiff's motion for instructed verdict.
8. Order of May 4, 1928, giving leave to plaintiff to amend declaration on its face.
9. Motion of defendant on May 4, 1928, for directed verdict.
10. Motion of plaintiff on May 4, 1928, for directed verdict.
11. Order of May 8, 1928, overruling defendant's motion for directed verdict.
12. Order of May 8, 1928, sustaining plaintiff's motion for directed verdict.
13. Verdict.
14. Judgment.
15. Motion by defendant for new trial and order overruling the same.
16. Motion by defendant in arrest of judgment and order overruling the same.
17. Order granting sixty days for bill of exceptions.
18. Stipulation regarding bill of exceptions.

218 19. Order extending time to present and settle bill of exceptions and to have same approved and filed to and including August 6, 1928.

20. Bill of exceptions.
21. Order of July 13, 1928, regarding original bill of exceptions.
22. Notice of petition for appeal, etc.
23. Petition for appeal.
24. Assignment of errors.
25. Order allowing appeal without bond.
26. Notice of appeal.
27. Citation with acknowledgment of service.

28. Præcipe for transcript of record.
29. Notice of filing præcipe.
30. Clerk's certificate.

Said transcript is to be prepared as required by law and the rules of the United States Circuit Court of Appeals for the Seventh Circuit.

GEORGE E. Q. JOHNSON,
United States Attorney for the
Northern District of Illinois,
Attorney for Defendant.

[Clerk's certificate to foregoing transcript omitted in printing.]

219 [Citation in usual form showing service on Zane, Morse & Norman et al., filed July 13, 1928, omitted in printing.]

220 [Appearances of counsel omitted in printing.]

221 In United States Circuit Court of Appeals, Seventh Circuit

4074

MABEL G. REINECKE, COLLECTOR, ETC. vs. EUDORA HULL SPALDING — Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Order extending time

Sept. 4, 1928

Upon motion of appellant by her attorney, George E. Q. Johnson, United States attorney, it is hereby ordered that the time for the appellant to file her brief in the above-entitled cause be extended to and including September 14, 1928.

In United States Circuit Court of Appeals

Order setting cause

Oct. 2, 1928

222 On motion of counsel for appellee it is ordered by the court that this cause be placed on the calendar for the October session of the October term, 1928, of this court; and it is further ordered that this cause be set down for hearing on Friday, October 26, 1928.

[Minute entry of argument and submission Oct. 26, 1928, omitted in printing.]

223 In United States Circuit Court of Appeals

[Title omitted.]

Judgment

Jan. 2, 1929

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed, with interest allowed by law.

224 In United States Circuit Court of Appeals for the Seventh Circuit

October term, 1928; January session, 1929

No. 4074

MABEL G. REINECKE, COLLECTOR, APPELLANT, vs. EUDORA HULL SPALDING, APPELLEE.	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Opinion

Filed January 2, 1929

Before EVANS, PAGE, and ANDERSON, Circuit Judges

Opinion by PAGE, Cir. J.:

The leases, for iron ore bearing lands, in this case, were involved in McHale v. Hull, 16 Fed. (2d) 781, and were made by appellee in that case and by plaintiff (appellee) here, and others, as lessors. The following matters present in this case are not found in the McHale Case: (a) A properly authenticated bill of exceptions; (b) a jury trial; (c) each party asked an instructed verdict.

A verdict was directed for plaintiff, who sued to recover an alleged excess of taxes, paid under protest, for the years 1917 and 1918, on her income under those leases.

225 There were seven leases made, one in 1901, four in 1902, one in 1903, and one in 1905, for the mining of iron ore from lands in Minnesota, in which plaintiff owned a one-sixth interest. The compensation to lessors was a royalty of 25 cents per ton, payable quarter-annually. No lease was for a longer term than 50 years. Under the 1905 lease the term, as to several tracts, was 45 years, but as to one tract was 50 years. Under the 1903 lease the term was 25 years. Under one 1902 lease the term was 50 years for mining five-sixths, but for mining a certain described one-sixth was for only 25 years. The provisions as to the annual minimum to mined varied. Several, if not all of the leases, gave the lessees the right to cancel on 30 days' notice.

The sole controversy is over the correctness of the Government's method of arriving at the value of the iron ore in the ground on March 1, 1913, a matter not covered by the revenue acts in question, nor by any regulation of the Treasury Department.

The only thing the Government's one witness testified to was the general custom in the mining business with reference to determining allowance for depletion. In response to a question by the court, he said that in making such determination they assumed that the value of the mineral in place had been arrived at—that is to say, they assumed the very thing here in controversy.

For plaintiff, several witnesses testified, and their qualification is not questioned, that the March 1, 1913, value of the ore in place was over 25 cents per ton.

The Government's case is based upon several assumptions: First, it assumed the number of tons of ore in place on March 1, 1913, and the correctness of that assumption is not controverted; second, it states the average tonnage mined in the years 1913 to 1918, inclusive; third, applying that average, it assumes that the whole tonnage will be mined in 40 years, and that plaintiff's one-sixth interest in the leases will yield her in 40 years, at 25 cents per ton, $7,849,287.18. And, therefore, the Government says the way to arrive at the market value on March 1, 1913, of the ore in place is to find the March 1, 1913, value of the $7,849,287.18 to be paid, as assumed, over a period of 40 years. By that process, the value of one ton of ore in place on March 1, 1913, was found to be .0886243, and the whole value of plaintiff's one-sixth interest, as of that date, was found to be $2,782,551.64. The Government's figures and processes are set
226 out in a letter to plaintiff, pertinent portions of which are as follows (numerals at left are ours):

Ore reserve, March 1, 1913, according to the Minnesota Tax Commission, as shown on questionnaire of the Royalty Mineral Association	tons	191,417,150
Less: Advance royalty payment by lessees, prior to March 1, 1913, on	tons	3,034,258
(1) Net tonnage as of March 1, 1913		188,382,892
(2) Your interest, one-sixth, March 1, 1913	tons	31,397,148.7
(3) Total average extraction, 1913 to 1918, inclusive	tons	4,770,000
(4) Maximum life of mine allowed	years	40
(5) Interest rate allowed		6%
(6) Royalty rate per ton		$0.25
(7) Your capital sum returnable in 40 years		$7,849,287.18
(8) Present worth of your interest, March 1, 1913		$2,782,551.64
(9) Unit cost per ton, March 1, 1913, basis for depletion		$0.0886243
(10) Depletion in 1916, 1,096,015.4 tons at $0.0886243		$97,133.60
(11) Depletion in 1917, 1,040,280.4 tons at $0.0886243		$92,194.92

We are of opinion that the Government's method of arriving at the March 1, 1913, value of the ore in place is wrong for many reasons, some of which are—

(a) The assumption that the value of the leases to plaintiff, at the end of 40 years, will be $7,849,287.18 is far from correct. That is only the principal she will receive for her one-sixth interest within the time taken to mine the whole of the ore. The leases were

and are worth, also, the interest upon the payments made quarterly over the mining period. As shown by the letter, supra, there were mined in each year, 1916 and 1917, in excess of 1,000,000 tons, from which she received, each year, in excess of $250,000. At 5% that would double in 20 years, and in 40 years would be worth to her nearly three-quarters of a million dollars. All interest would be in excess of the $7,849,287.18. On the Government theory it would take all interest to make that amount.

(b) It is reasonably probable that where there is a large body of ore to be mined, extending over a term of years, the amount mined annually would vary greatly, being governed by the equipment employed, the market demands, and prices, and oftentimes by the fact that the lessee had, or did not have, requisite capital to operate the mines. For those reasons, the average extraction for the years 1913 to 1918 would, in all probability, be no fair basis for arriving at an average during the whole term. That this is so, is evidenced by the fact that the tonnage, shown by the letter to have been mined in 1916 and 1917—two of the six years used by the Government as the basis for arriving at the term of 40 years—
227 would reduce the Government's theoretical period of 40 years by one-fourth, so that plaintiff's whole tonnage at the 1916 and 1917 average would be mined in 30 years, thereby, on the Government's theory, very materially increasing the market value on March 1, 1913; 45% of the amount mined in those six years were mined in the two years, 1916 and 1917, so that the average for the other four years was less than 700,000 tons.

(c) With the exception of tract 6, which may be mined under the lease made in 1905 within 50 years, there is no lease that runs for a term of 40 years after March 1, 1913. Under the 1901 lease one-sixth had to be mined out in 25 years. The 1903 lease was made for a term of 25 years. So that the estimated period of 40 years extends far beyond the time permitted by the leases and within which plaintiff would have received all of her money if all the ore had been mined.

(d) The right to mine under the leases was not a sale of the iron ore. The leases here in question are similar to, if not identical in form with, the leases involved in a number of cases in the Supreme Court, one of which is VonBaumbach *v.* Sargent Land Co., 242 U. S. 503. The Government there contended that the payments for ore mined under the leases were income within the meaning of the Act of 1909, and did not represent the conversion of the investment of the corporations from ore into money, as contended by the land company. The court adverted to the fact that in Pennsylvania the contracts were leases in name only, but were in fact conveyances of the ore in place as part of the realty, and that the so-called royalties merely represented payment for so much of the land, and were in no just sense income, but were conversions of the capital. The court pointed out that under the Minnesota decisions there is no sale under such contracts. It was found not necessary to decide

as between the Pennsylvania and the Minnesota cases, because the court found that the royalties were income within the meaning of the 1909 revenue act.

United States *v.* Biwabak Mining Co., 247 U. S. 116, was also under the act of 1909. In that case, the court said that the Circuit Court of Appeals had distinguished the case before it from the Sargent Land Co. Case, and pointed out that the Circuit Court of Appeals concluded by saying:

"We therefore think that applying the principle of the
228 Sargent Case results in holding that these receipts were from the sale of capital assets and not from income."

The Supreme Court said it did not agree with the Circuit Court of Appeals as to the effect of the Sargent Land Company Case, and concluded:

"The lessee takes from the property the ore mined, paying for the privilege so much per ton for each ton removed. * * * He is, as we held in the Sargent Land Co. case, in no legal sense a purchaser of ore in place."

Lynch v. Alworth-Stevens Co., 267 U. S. 364, involved a tax under the 1917 revenue act, one of the acts here in question, and the holding was that there was no conveyance of the title to ore in place.

The leases might have been cancelled at any time, and it is evident, for many reasons, that there was no sale of the ore when the leases were made.

Section 5 (Eighth-b) of the revenue act of 1916 (39 U. S. Stats. at L., p. 756, 759) provides that there shall be an allowance for depletion "not to exceed the market value in the mine of the product thereof, which has been mined and sold during the year or which the return and computation are made." This language, by its terms, has nothing to do with the whole body of the ore in place. It is not related to the market value of all of the tonnage in the mine, but the depletion relates to the market value in the mine of the product mined and sold during the year for which the return is made.

If the amount mined in 1916 was ever sold, so far as this taxing question is concerned it was sold in 1916, and if it then had a price that price was 25 cents per ton royalty then paid plaintiff. And the same is true as to every year. If it had all been mined in 1913, unquestionably the market value would have been 25 cents per ton. It cannot be possible that the 1913 value can be fixed by the lease at .0886243 and at the same time have the lease yield to plaintiff 25 cents per ton for 1913 and every succeeding year of operation. There could be no increase in value because the price paid was fixed by the lease prior to 1913. A royalty of that kind, when paid, is a payment for iron ore. In Burke Co. v. Lawson, 151 S. W. 657, the Court of Appeals of Kentucky said:

"The 'royalty' is is the price paid for the coal as it lies in the earth. That is what it sells for."

It seems clear that the ore mined in 1916 was worth to plaintiff 25 cents per ton, that that price continued two elements, mine depletion and profit, and that the way of arriving at the profit was to take the fair cash market value on March 1, 1913, of the tonnage mined in 1916 (which was shown to be 25 cents per ton) less the interest carrying charge of 5% from March 1, 1913, to 1916.

It seems to us that the impossibility of applying the Government's theory may be illustrated by the following: Assume that of the seven leases in question all of the provisions were identical, except that six of the leases were for one, two, three, four, five, and six years, respectively, and the seventh was for 40 years, and that from each tract during the first year there were mined one million tons of iron. It must be clear that, on the Government's theory, the ore in place on March 1, 1913, although of like kind and quality, would, under each lease, have a materially different value from that covered by the other leases. Under the one-year lease the value of the ore would be 25 cents per ton, and under the 40-year lease it would be less than one cent per ton.

We are of opinion that appellant's method of arriving at the market value of the ore in question on March 1, 1913, is unsound in principle, and in any event is based upon too many uncertainties and assumptions to be of any reliable use in ascertaining the value.

The judgment should be, and is, affirmed.

230 In United States Circuit Court of Appeals

[Title omitted.]

Stipulation re stay of mandate

Filed Jan. 17, 1929

It is hereby stipulated and agreed by and between the parties to the above-entitled cause by their respective counsel that the mandate in said cause shall be stayed to and including March 1, 1929.

GEORGE E. Q. JOHNSON,
Counsel for Appellant.
JOHN M. ZANE,
CHARLES F. MORSE,
HAROLD W. NORMAN,
HENRY GARDNER,
Counsel for Appellee.

[File indorsement omitted.]

In United States Circuit Court of Appeals

[Title omitted.]

Order staying mandate

Jan. 17, 1929

Pursuant to the filing of stipulation of counsel it is now here ordered that the mandate of this court be, and the same is hereby, stayed to and including March 1, 1929.

231 In United States Circuit Court of Appeals

[Title omitted.]

Stipulation re stay of mandate

Filed Feb. 26, 1929

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, by their respective counsel, that the mandate in said cause shall be stayed to and including April 1, 1929.

GEORGE E. Q. JOHNSON,
Counsel for Appellant.
HENRY A. GARDNER,
JOHN M. ZANE,
CHARLES F. MORSE,
HAROLD W. NORMAN,
Counsel for Appellee.

[File indorsement omitted.]

In United States Circuit Court of Appeals

[Title omitted.]

Order staying mandate

Feb. 26, 1929

Pursuant to filing of a stipulation of counsel it is now here ordered that the mandate in this cause be, and the same is hereby, stayed until and including April 1, 1929.

232 [Clerk's certificate to foregoing transcript omitted in printing.]

234 Supreme Court of the United States

Order allowing certiorari

Filed April 29, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Indorsement on cover:] File No. 34,108. United States Circuit Court of Appeals, Seventh Circuit. Term No. 799. Mabel G. Reinecke, collector of internal revenue for the first district of Illinois, petitioner, vs. Eudora Hull Spalding. Petition for writ or certiorari and exhibit thereto. Filed March 30th, 1929. File No. 34,108.

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